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REPORT DOCUMENTATION PAGE

1. REPORT SECURITY CLASSIFICATION UNCLASSIFIED		1b. RESTRICTIVE MARKINGS NONE	
2. SECURITY CLASSIFICATION AUTHORITY		3. DISTRIBUTION/AVAILABILITY OF REPORT APPROVED FOR PUBLIC RELEASE; DISTRIBUTION UNLIMITED.	
4. DECLASSIFICATION/DOWNGRADING SCHEDULE			
5. PERFORMING ORGANIZATION REPORT NUMBER(S)		5. MONITORING ORGANIZATION REPORT NUMBER(S) AFIT/CI/CIA- 89-110	
6. NAME OF PERFORMING ORGANIZATION AFIT STUDENT AT GEORGE WASH UNIV		6b. OFFICE SYMBOL (If applicable)	
7. ADDRESS (City, State, and ZIP Code)		7a. NAME OF MONITORING ORGANIZATION AFIT/CIA	
8a. NAME OF FUNDING/SPONSORING ORGANIZATION		8b. OFFICE SYMBOL (If applicable)	
8c. ADDRESS (City, State, and ZIP Code)		9. PROCUREMENT INSTRUMENT IDENTIFICATION NUMBER	
		10. SOURCE OF FUNDING NUMBERS	
		PROGRAM ELEMENT NO.	PROJECT NO.
		TASK NO.	WORK UNIT ACCESSION NO.
11. TITLE (Include Security Classification) (UNCLASSIFIED) "INFLAMED WITH STUDY": EIGHTEENTH-CENTURY HIGHER EDUCATION AND THE FORMATION OF THE AMERICAN CONSTITUTIONAL MIND			
12. PERSONAL AUTHOR(S) DAVID M. KIRKHAM			
13a. TYPE OF REPORT THESIS/DISSERTATION		13b. TIME COVERED FROM _____ TO _____	
		14. DATE OF REPORT (Year, Month, Day) 1989	
		15. PAGE COUNT 346	
16. SUPPLEMENTARY NOTATION APPROVED FOR PUBLIC RELEASE IAW AFR 190-1 ERNEST A. HAYGOOD, 1st Lt, USAF Executive Officer, Civilian Institution Programs			
17. COSATI CODES		18. SUBJECT TERMS (Continue on reverse if necessary and identify by block number)	
FIELD	GROUP		
19. ABSTRACT (Continue on reverse if necessary and identify by block number)			
20. DISTRIBUTION/AVAILABILITY OF ABSTRACT		21. ABSTRACT SECURITY CLASSIFICATION	
<input checked="" type="checkbox"/> UNCLASSIFIED/UNLIMITED <input type="checkbox"/> SAME AS RPT. <input type="checkbox"/> DTIC USERS		UNCLASSIFIED	
22a. NAME OF RESPONSIBLE INDIVIDUAL ERNEST A. HAYGOOD, 1st Lt, USAF		22b. TELEPHONE (Include Area Code) (513) 255-2259	
		22c. OFFICE SYMBOL AFIT/CI	

ABSTRACT OF DISSERTATION

"Inflamed with Study": Eighteenth-Century Higher Education and the
Formation of the American Constitutional Mind

by

David M. Kirkham

Scholarship has shown that ^{18th} eighteenth-century higher education had a general tendency to "politicize" and "republicanize" American colonials. An examination of the educational backgrounds of the delegates to the Constitutional Convention reveals particularly that higher education made an essential contribution to the creation of the U.S. Constitution. Many of the intellectual sources of the Constitution were conveyed to the framers through the higher education process. In a day when a fraction of a percentage of Americans went to College, ³⁷⁰⁻¹⁴⁰⁻⁵⁵ thirty-one of the fifty-five delegates to the Convention had substantial formal higher education at American colleges, at European, especially Scottish universities, and at the English Inns of Court.

This study shows how higher education transmitted the precepts of British-American republican constitutionalism to the ^{real framers} of the Constitution, that is, those delegates generally most responsible for the Constitution's construction. It reveals how the writings of classical antiquity, the common law, the English Whig tradition, the European Enlightenment, Protestant religion and the study of history conveyed to colonial collegians and members of the Inns of Court constitutional principles that would find their way into the American charter.

This research also indicates that the contributions to constitutional thought of the College of New Jersey (Princeton) and the

Inns of Court were exceptional in terms of both which and how many delegates these institutions educated. Among sources verifying this contention are John Dickinson's correspondence from the Inns of Court, William Paterson's Princeton collegiate papers, and Princeton President John Witherspoon's lectures on moral philosophy.

Captain David M. Kirkham, United States Air Force
Ph.D., 1989, George Washington University, 346 pages.

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**"Inflamed with Study": Eighteenth-Century Higher Education
and the Formation of the American Constitutional Mind**

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A Dissertation submitted to

The Faculty of

**The Graduate School of Arts and Sciences
of The George Washington University in partial satisfaction
of the requirements for the degree of Doctor of Philosophy**

September 30, 1989

Dissertation directed by

**Marcus Cunliffe
University Professor**

ACKNOWLEDGEMENTS

I would like to thank Dr. Rosemarie Zagarri and Professor John Boswell for their assistance, as readers, in bringing this project to fruition. Dr. Zagarri offered a tutored eye and mind to every draft of every chapter, and with unfailing generosity took the time necessary to discuss with me her insights and suggested improvements. Professor Boswell not only reviewed this work from the standpoint of the history of education, but he provided me much-appreciated practical advice on the dissertation-writing process in general and its relation to life.

I am grateful to Dr. Kenneth Bowling, Associate Editor of the First Federal Congress Project, for offering his personal time to review this study. More than one tortured sentence was relieved of its agony through his editorial intervention, and the substance of the project was improved through his sharing his considerable knowledge of early, post-Convention, American politics and his understanding of the "non-intellectual" sources of the Constitution.

I especially would like to thank my director, Professor Marcus Cunliffe, who has seen this project grow from a seed sown several years ago in his "Republicanism in America" course to its present state. He

has discussed this study with me on two continents, and, in the end, has left me flattered in my belief that there is something of his personal stamp on it all. He has saved me from a number of errors in fact or faulty thinking, but of course I alone bear the responsibility for any errors from which, despite his best efforts, he has failed to keep me.

I am also grateful to Professor Lois Schwoerer for guiding me to useful materials on the training of English and American lawyers in the eighteenth century; to Ms. Jean Preston and her staff at the Princeton University Library Manuscript Division for providing me with William Paterson's college writings and permitting me to quote from them; to the University of London Institute of Historical Research, whose 1986 Anglo-American conference on the history of higher education confirmed me in my chosen topic; to staff members of the libraries of George Washington University, George Mason University, the University of Cambridge, and the Library of Congress, and to the United States Air Force Academy Department of History and the Air Force Institute of Technology, whose sponsorship of my graduate study during the past two years has permitted me to do something I love and provide for the family that I love simultaneously. It is especially the love, help and encouragement of these last--my wife Judy, my daughters Aimee, Angel and Brittany, and my son Christian--that I "acknowledge."

ABSTRACT OF DISSERTATION

Scholars such as David Robson have shown that eighteenth-century higher education had a general tendency to "politicize" and "republicanize" American colonials. Examining this assertion against the higher educational background of the delegates to the Constitutional Convention reveals that higher education made an essential contribution to the creation of the U.S. Constitution. One of the primary means by which the intellectual sources of the Constitution were conveyed to its framers was through the higher education process. In a day when a fraction of a percentage of Americans in general went to College, thirty-one of the fifty-five delegates to the Convention had substantial formal higher education at American colleges, at European, especially Scottish universities, and at the English Inns of Court.

This study shows how higher education transmitted the precepts of British-American republican constitutionalism to the "real framers" of the Constitution, that is, those delegates generally most responsible for the Constitution's construction. In particular it reveals how the writings of classical antiquity, the English common law, the English Whig and Commonwealth tradition, the European, again especially Scottish Enlightenment, Protestant religion and the study of history conveyed to colonial collegians and members of the Inns of Court specific constitutional principles that would ultimately find their way into the American charter.

This research indicates not only that eighteenth-century higher education as a whole made an important impact at the Convention, but

that especially the contributions of the College of New Jersey (Princeton) and the Inns of Court were exceptional in terms of both which and how many delegates these institutions educated. Among sources verifying this contention are John Dickinson's correspondence with his parents while he was at the Inns of Court, William Paterson's Princeton commonplace book and collegiate essays, and the lectures on moral philosophy of Princeton President John Witherspoon that James Madison and other delegates would have attended and studied diligently.

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PREFACE

Inflamed with the study of learning and the admiration of virtue; stirred up with high hopes of living to be brave men and worthy patriots, dear to God, and famous to all ages.

--Milton, Of Education¹

For eighteenth-century Americans, one of the avowed aims of higher education was to create statesmen. The Yale charter of 1701 called for an institution "wherein Youth may be instructed in the Arts & Sciences who through the blessing of Almighty God may be fitted for Publick Employment both in Church & Civil State." The renewed charter in 1745 stated that the College had thus far served to train up "ma. y worthy persons for the service of God in the State as well as in Church." The founders of Princeton stated that, although their intention had been to create a seminary to train ministers of the Church, yet they hoped that the College would "be a means of raising up men that will be useful in other learned professions--ornaments of the State as well as the Church."²

In fact the institutions of higher education attended by Americans of the 1700s were devoted to creating civic-minded men. In an important study of how republican ideas were transmitted in the early American

colleges, David Robson has shown convincingly that, during the Revolutionary era, students and faculty alike went through an intense, serious politicization in the college community.³ Other historians support this notion. Lawrence Cremin says that the educational institutions of the time were "inevitably sensitive to public concern; and, as politics moved to the forefront of public concern, politics, willy-nilly, entered the curriculum." Pointing out that the colonial colleges catered to elites, Frederick Rudolph indicates that the colleges were "clearly a source of political leaders," though he adds, "not everyone aspired to be a leader."⁴

But in training political leaders, the colleges did more than merely entrench the colonial elite in its elevated status. True, the sons of well-to-do colonists were more likely than their less-well-off contemporaries to pursue higher education. Southerners, in particular, frequently sent their sons to be educated in England so that the young men could acquire the marks of aristocracy. But more importantly than providing a status symbol for colonial Americans, attendance at the colleges, universities and Inns of Court of the eighteenth century, put Americans through a process of study and experience that made them think as republicans.

This study verifies, in part, that eighteenth-century higher education was a successful breeding ground for republican American statesmen. It addresses the degree to which important public servants, particularly at the national level, were products of contemporary institutions, at home and abroad, of what we would call post-secondary education and the extent to which they gathered through the higher

education process the ideas, knowledge and skills with which they would perform their public functions. Specifically, it takes the assertion that higher education during the American colonial era constituted a "politicizing" and "republicanizing" force and applies it to one well-defined body of American statesmen, the delegates to the Federal Constitutional Convention of 1787. This study will show that Convention members did indeed owe a great debt to their institutions of higher learning. Not only had a substantial number of them attended the American colleges, European universities, and the English Inns of Court, but the most important theorists of the Convention, obtained much of their initial understanding of politics and government in the course of their formal higher education.

This study will, therefore, examine the extent to which formal higher education contributed to the political philosophies of those delegates to the Federal Convention who were most responsible for the creation of the Constitution. I proceed by synthetically examining in Chapters One and Two the intellectual origins of the Constitution, stressing the importance of political ideology and historical knowledge in its creation. Chapter Three comprises a survey and description of the higher educational experiences and institutions of the delegates to the Convention. Chapters Four and Five further refine my thesis by identifying the "real framers" among the delegates, that is those most responsible for the Constitution's construction, and look carefully at the particular contributions of the members with higher education in this more select group. The concluding chapter links together the ideas with the men and the institutions, revealing the extent to which higher

**education shaped the political, republican and constitutional views of
the men who created the Constitution.**

NOTES

1. John Milton, Of Education in The Norton Anthology of English Literature, vol. 1, edited by M.H. Abrams, E.Talbot Donaldson, Hallett Smith and others (New York: Norton & Company, 1962), 894.
2. Quoted in David W. Robson, Educating Republicans: The College in the Era of the American Revolution, 1750-1800, (Westport, Connecticut: Greenwood Press, 1985), 14. See also, Frederick Rudolph, The American College and University: A History, (New York, 1962), 12. Rudolph says that Princeton promised "it would be not so much a seminary for Presbyterian divines as a school for statesmen."
3. Robson, Educating Republicans.
4. Lawrence A. Cremin, American Education: The Colonial Experience 1607-1783, (New York: Harper and Row, 1970), 459. Rudolph, 22.

CHAPTER I

THE IDEAS: SOURCES OF AMERICAN CONSTITUTIONAL THOUGHT BEFORE 1787

"He then proceeded to the remedy; the basis of which he said must be the republican principle."

--James Madison on Randolph's presentation of the Virginia plan to the Constitutional Convention, 1787.¹

The origin of the American Constitution has frequently been examined in terms of the personal interests of the men who made it or as a series of compromises brought about as a result of vastly different concerns of the separate states. The Beard School, which prevailed during much of the first half of the twentieth century, only minimally considered the role of ideas and ideology in the creation of the national government. Since the 1960s however scholars have given new emphasis to the importance of ideology during the colonial and early national periods.

There was indeed a philosophical basis to the document that emerged from the 1787 Convention--according to Forrest McDonald--"a complex body of political thought (including history and law and political economy) that went into the framing of the Constitution."

This is not to deny that personal interests, compromise and geopolitical

influences had a fundamental role in the creation of the Constitution, but no examination of the origins of United States government can ignore the importance of ideas. Writes another historian, "there is a coherent political theory of the Constitution."²

A few eminent historians have been up to the demanding task, or nearly so at least, of tracing the intellectual sources of the Constitution. McDonald, for one, asserts that intellectual history is not "unverifiable 'impressionistic' history," but that we can in large part discover the minds of the founders. Another, Gordon Wood, suggests that part of the difficulty lies in that the Constitution's sources seem to include "the whole of previous history." He stresses that no one person can be said to have been the sole inspiration for the Convention delegates, warning that "isolating the influence of any one thinker on the Founding Fathers may be impossible." Despite this difficulty Wood is confident that one can readily identify the dominant strains of political culture surrounding the making of the Constitution and understand the delegates' brand of republicanism.³

In its attempt to trace the contribution of eighteenth-century higher education to American constitutional thought, the present study will not "reinvent the wheel" with regard to the Constitution's intellectual origins. The work of McDonald, Wood and others is current and quite thorough. A survey of their writing, along with recourse to the Convention debates themselves, will provide a solid grounding for the less-studied endeavor of assessing the contributions of the men, institutions, and ideas of higher education to the formation of the Constitution.

Perhaps the most coherent approach to identifying the sources of the ideas in the Constitution is to borrow from Bernard Bailyn the categories of thought he derived from his study of the ideological background of the Revolution and apply these to the Constitution.⁴ Scholars generally give Bailyn credit for succinctly identifying the sources of eighteenth-century American political thought, quibble though they may with the emphasis he gives certain of these sources.⁵ Before plunging into a Bailyesque analysis, however, a further word of explanation is necessary.

There remains among scholars some debate about how much the American Constitution of 1787 is a result of the same forces that produced the American Revolution. The twentieth-century view in general has been that the Federal Convention marked a Thermidorean reaction by a conservative establishment to the liberal (in the current sense of the word) forces that produced the Revolution. One writer who has examined this question, George Mace, includes among proponents of this interpretation Beard, Vernon Parrington, Samuel Eliot Morison, Henry Steele Commager, and Richard Hofstadter. More recently, although his explanation for the Constitution is more complex, Gordon Wood has interpreted the period between the Revolution and the Constitutional Convention as a transformational time in American political thinking which culminated in the end of classical politics and the emergence of a new political culture, uniquely American. Wood's view thus also implies something different in the respective intellectual backdrops to the Constitution and the Revolution.⁶

Other scholars, however, see the creation of the Constitution as a product of essentially the same, if not the culmination of, revolutionary forces that were at work in colonial America. Mace, for one, draws the two strands closer in seeing the Declaration of Independence as more Hobbesian, and thus more consistent with monarchy, and the Constitution as more democratic, than Beard and his successors would allow. Clinton Rossiter views the Constitution as "an act of confirmation . . . designed to be the last formal act of the Revolution" which "put the stamp of irrevocable legitimacy on the three great legacies of 1776: independence, republicanism, and union." To Rossiter, the ratifying conventions "were instruments of the Revolution every bit as legitimate as the meetings and battles of 1776. The Constitution was indeed the Revolution brought to fruition."⁷

Vetterli and Bryner argue that the founders responded to both republican and liberal (in the eighteenth-century sense of the word) traditions. They seem to agree with Hyneman and Lutz that the sources of the Revolutionary and constitutional intellectual traditions were essentially the same although there were some shifts in emphasis during the period, "with Locke emphasized more during the revolutionary period, and Montesquieu increasing in importance during that of Constitutional consideration and construction."⁸

One of the strongest proponents for synthesizing the intellectual forces behind the Revolution and the Constitution is Garry Wills. According to Wills, the idea that the Constitution somehow illustrated a letdown of revolutionary ideals has been shown to be "bad history." He repudiates Vernon Parrington's notion that the American saga has been

one long struggle between the principles of the Declaration of Independence and the concepts of the Constitution. To Wills this is a "tired idea," and though still evanescently popular, it is plainly not "the secret of American politics."⁹

Whether the Constitution was in some sense a fulfillment of revolutionary ideals or a conservative reaction against these ideals need not be definitively resolved here. However, in addition to scholarly evidence, both experience and common sense (important cognitive principles for the founders), suggest likewise to the present-day investigator that elements of revolutionary thought continued in the minds of the delegates, most of whom in one form or another had contributed to the patriot cause against Great Britain. Although some among them feared the excesses of democracy that might flow from notions of equality being pushed too far, records of the debates show no evidence of a great abandonment of earlier ideals by the delegates. The "people-at-large" had an abundance of strong supporters within the Convention.

Indeed many contemporaries saw a unification of the nation under a stronger constitution as a necessary completion of the Revolution. Writing in anticipation of the Annapolis preliminary to the Constitutional Convention, Benjamin Rush stated, "we entertain the most flattering hopes from this Convention, especially as an opinion seems to have pervaded all classes of people that an increase of power in Congress is absolutely necessary for our safety and independence." He indicated that American problems and European misconceptions of the new country had developed from a mistaken belief that the Revolution was

over. "This is so far from being the case that we have only finished the first act of the great drama," he said.¹⁰

But the important thing for the present study is not so much to determine the exact nature of the relationship between the Revolution and the Constitution but rather whether their intellectual sources were fundamentally different. The answer to this query here posited is that they were not. Whatever shifts in emphasis may have occurred between the 1760s and the 1780s, whatever various political uses may have been made of different philosophers and writers during the period in question, there was no remarkable change in the written sources drawn upon for political philosophy. Nor is there even any suggestion from those who see the Revolution and Constitution as fundamentally different that such a change occurred. Scholars of the intellectual origins of both point to the same basic sources as their founts of inspiration, however different the results. Thus we return to Bernard Bailyn.

Bailyn's cardinal study of the origins of eighteenth-century political thought reveals the tributaries of five general intellectual traditions feeding the American mainstream: Greek and Roman classical antiquity; the European Enlightenment; Christian thought, particularly Puritan covenant theology; the English common law, and, perhaps most importantly for Bailyn, English Commonwealth or radical Whig philosophy. A review of the Convention debates and of those studies that purport to identify the intellectual sources of the Constitution confirms that these same five traditions influenced American constitutional thinking. In addition, "experience," not only the delegates' own, but especially historical experience, had as much influence, if not more, on the

ultimate product of the Convention as any intellectual tradition. In a study of the contribution of higher education to the Constitution, therefore, it is essential to examine the influence of historical knowledge on the process, since historical awareness came to these men in the same way it comes to us: We read history; we conduct historical research; or we are taught by others. In fact, the influence of history is deemed of sufficient importance in this study to merit its own chapter.

It is thus from these six sources--the classics, the Commonwealth tradition, law, religion, the Enlightenment and history--that the Constitution derived its intellectual inspiration.

CLASSICAL ANTIQUITY

Although classical learning saturated American colonial intellectual life, it does not necessarily follow that the political elite looked to the examples of Greece and Rome for models on which to found a system of government. Some have argued that they did not. Although any educated, even self-educated, eighteenth-century person would have understood most classical allusions and cited them generously in orations, sermons and writings, to some degree at least such exhibitions of learning represented "window dressing" intended more to impress than to instruct.¹¹ Citations of classical authors accompanied most political polemics, Whig and Tory alike. According to Meyer Reinhold, "during the formative time of the new nation (ca. 1750-90) reading of the classics and uses of knowledge of antiquity were indeed grossly selective, complacently antiquarian, instrumental."¹²

On the other hand it does not necessarily follow from the "window dressing" idea that classical learning was unimportant for the development of the Constitution. Though some classical scholars go too far in hinting that knowledge of Greek and Roman political institutions was the sine qua non of America's founding, one can check their enthusiasm and still conclude that the "lessons" of antiquity held an eminent place in the minds of the delegates: "The enthusiast for Greek and Latin should . . . understand that window dressing must be distinguished from fundamental ideas, symbolically or realistically expressed."¹³

According to Gilbert Chinard, "most of the men who made a name for themselves during the revolutionary era were no mean classical scholars." Reinhold states that the American "appeal to classical political theory and practice reached its peak" at the time of the Federal Convention. "Many of the delegates to the Convention in Philadelphia," says Reinhold, "did their classical homework diligently, especially Madison, Hamilton, and James Wilson. . . . It is clear that the precedents, analogies, and lessons Madison and others quarried from antiquity were not mere window dressing or 'pedantry in politics,' but solemn exercises in comparative political institutions and history."¹⁴

The sources of the delegates' knowledge of antiquity included primary and secondary writings. The educated among them generally had learned Latin and some Greek and could, if they would, read classical literature in the original. However, being human and also quite practical, most of them preferred translations or contemporary commentaries.¹⁵

The list of Greeks and Romans studied by eighteenth-century Americans is long. Those most relevant to the Constitution makers included among the Greeks Plato, Aristotle, Demosthenes, Polybius, Strabo, Thucydides, Xenophon, Plutarch and Dionysius of Halicarnassus. Favored Romans included Cicero, Livy, Sallust, Tacitus, and Cassius Dio. Preferred translators and authors of secondary works on the glory and grandeur of Greece and Rome included Charles Rollin, Abbé René de Vertot, Edward Montagu, Adam Ferguson, Walter Moyle, Conyers Middleton, G. Bonnot de Mably, Millot, William Mitford and John Gillies.¹⁶

It is not easy to isolate the precise contribution of classical thought to eighteenth-century American constitutional philosophy. Although certain delegates and early commentators on the Constitution made explicit references to Greco-Roman precedents as ideological sources for their remarks, in perhaps as many cases ideas were conveyed without attribution. What is more, in too many instances the founders gleaned their thoughts from more modern writers such as Montesquieu who in turn had borrowed heavily from classical sources. These cases have contributed to the obfuscation and occasional exaggeration of the role of the classics in American politics.

Despite these obstacles, no one has dared suggest that the classics were unimportant to the founders. The obvious references and explicit acknowledgements by eighteenth-century thinkers to this body of thought are too many. The gun, thus, is still smoking; the body is still warm, and investigators of the influence of the classics in early America are finding many clues as to their political importance. Keeping in mind then, that there were many Greeks and Romans quoted and

referenced in the writings and speeches of the founders, it will pay here to examine only a few.

The Greek: Aristotle

Of Greek philosophers studied in early America, Plato was among the first to have lived, but he was not first and foremost in the minds of the delegates. He does deserve some credit for propagating the notion of mixed government and he was cited in the Federalist Papers. Still, the men of the Convention were too practical to take Plato altogether seriously. He was more spiritual advisor than pragmatic politician. His ideal republic had never been tried and proven, and thus he "is almost entirely absent from [the] debates on the Constitution."¹⁷

Of far more importance for the creation of the Constitution was the thinking of Aristotle. His Politics was the result of his analysis of some 158 constitutions, by far the most ambitious work of its kind known to ancient history. Although many of Aristotle's ideas regarding the place of government in people's lives would have been unacceptable to the delegates, his development of the fundamental political principle of the mixed constitution went beyond Plato and was more practical.

Students of political philosophy are readily familiar with Aristotle's five archetypic governmental forms of monarchy, aristocracy and constitutional democracy (the last of these being variously translated as "republic," "constitutional government," "polity" or "timocracy") as well as their alternate degenerative forms of tyranny, oligarchy and democracy (or "ochlocracy" or "mobocracy" for the latter). No less familiar with these concepts were the American founders. The

sum of the notion was that each of these three forms of government was subject to abuse and inevitable degeneration which would ultimately rob citizens of their liberties and bring on the destruction of the state. In monarchies, kings would become tyrannical. Aristocracies constituted government by the rich, who would go soft or mad. Republics, or government by the people, would degenerate into an oppressive ruling of the poor over the middling and upper classes.

To thwart the degenerative tendency of any of these forms of government Aristotle proposed a mixed government designed around a largely middle-class society that combined elements of aristocratic and democratic government. He declared, "some, indeed, say that the best constitution is a combination of all existing forms, and they praise the Lacedaemonian because it is made up of oligarchy, monarchy, and democracy. . . . They are nearer to the truth who combine many forms; for the constitution is better which is made up of more numerous elements."¹⁸

And again, "there may arise an extreme democracy, or a pure oligarchy; or a tyranny may grow out of either extreme,--either out of the most rampant democracy, or out of an oligarchy; but it is not so likely to arise out of the middle constitutions and those akin to them."¹⁹

The British constitution, so revered by the greater number of the founders, was considered in most respects the best for the very reason that it epitomized the classical mixed constitution, with elements of monarchy in the King, of aristocracy in the House of Lords, and of constitutional democracy in the House of Commons. Thus had been born

Aristotle's primary contribution to modern, Western constitutionalism, to be developed further in the hands of Polybius and Cicero.

The Roman Greek: Polybius

Polybius (202-120 B.C.), another Greek who made a considerable, but often unheralded contribution to American constitutional thinking, was, with Herodotus and Thucydides, one of the triumvirate of great ancient Greek historians. A soldier-statesman captured by the Romans in the Third Macedonian War, he wrote a reliable history of Rome from 262 to 120 B.C. and was considered "the leading authority on the Greek city-states."²⁰

Based on his observations of the Roman, Carthaginian and Spartan governments, Polybius expounded on the notion of the mixed constitution as it developed in his mind. He praised the Roman system, especially as it existed at the time of the "Hannibalic War" when consuls, senate and populace were balanced and so mixed that it was impossible to tell whether the system was monarchical, aristocratic or democratic.

According to Gummere, it was Polybius who developed the doctrines of and first described a system of checks and balances and separation of powers, particularly the former. In Gummere's view American colonials were mistaken to ascribe these concepts to Bolingbroke and Montesquieu, important as these two were in developing the ideas, for Polybius was certain on these points.²¹

Polybius analyzed the city-states and found in each one an excess of one of the three kinds of government. John Adams noted as much in giving credit to Polybius' observations in his Defence of the Constitutions of Government of the United States of America (1787). He

explained that Polybius represented Lycurgus as uniting the three constitutional forms into one so as to avoid the inevitable decay of any one form into its correlative vice. This, said Adams, preserved the Lacedaemonians in liberty.²²

The Roman Republic described by Polybius had reached its height and had begun its decline. His writings dramatized the dangers of national decay. According to Gummere he was an ancient Toynbee or Spengler, interested in the "cycles of progress and decay of nations."²³ As such his material made perfect ammunition for worried American nationalists fretting over what they perceived as corruption and decline overtaking the land that had so recently won its independence from Great Britain. Polybius, thus, more than any other writer, was responsible for the conception the founders carried with them of classical republican constitutionalism. "The paramount model for the Founding Fathers of a constitution structured to retard political decay and assure at the same time freedom and stability was the constitution of Rome of the end of the third-early second centuries B.C.--as analyzed by Polybius in book 6."²⁴

The Roman: Cicero

A Roman who knew well and bemoaned the decline of Rome's republican constitution was the orator-statesman Marcus Tullius Cicero. Born in 106 B.C. in central Italy to a well-to-do but non-patrician family, Cicero received an excellent education in Rome. There he remained to pursue a public career, rising rapidly to become Rome's preeminent lawyer and orator, and eventually praetor and then consul--the latter an unheard of achievement for a parvenu in his

generation. Throughout his life, Rome experienced a series of civil wars which had varied effects on the ups and downs of Cicero's political career. Though continuing to serve in important political positions, he attempted to remain above politics, acquiring a reputation as a selfless statesman. He eulogized the declining republic in the face of tyrannical forces, but when forced to choose in the rivalries of the generals between Caesar and Pompey, he followed the latter, the eventual loser. For this he was ostensibly forgiven by Caesar, but the dictator's assassination, which Cicero approved but did not promote, left the orator ripe for reprisal when Caesar's avengers gained power. In December, 43 B.C., Cicero was killed at his country villa by Antony's emissaries. ²⁵

American early nationalists knew well and revered Cicero's statesmanship and republicanism. Arguing for the weight of the Roman patriot's authority in constitutional matters, John Adams called him the greatest statesman and philosopher combined who had ever lived. Cicero's constitutionalism came to them primarily through three of his written works: De Republica, De Officiis, and De Legibus. It was through these writings that Greek political theory had been transmitted to Rome and was now, in its turn, largely being transmitted to the eighteenth-century Americans. ²⁶

Some of the aspects of Cicero's constitutionalism are similar to those of his constitutional-minded predecessors. He recognized the three basic forms of government and their correlative degenerative elements, and proposed anew, perhaps even more explicitly, mixed government as a remedy to their corruptible tendency. He asserted that

through a balance of the best elements of each a government could achieve permanence and security. A supreme power was essential, but certain aspects of government were better managed by the aristocracy and some things were left best to the people--"auctoritas in senatu," "potestas in populo". Cicero was himself too sophisticated to be sentimental about vesting power in the plebeian populace; however, he was likewise put off by self-important aristocrats. "He was too sincere a character to pamper the masses or truckle to the classes," says Robert Wilkin.²⁷

Cicero felt strongly that citizens should take an active part in affairs of the state; it was through their participation that civil society was preserved from lawlessness, and Cicero asserted more strongly than Aristotle that the constitution must be based on law, rather than on recondite ethics. A great natural law thinker, he characterised the law as "'coeval with mankind,'" an idea echoed by English common-law jurists. But to the Roman statesman, as to the American framers later, for institutions of government to work, regardless their form, required character and virtue in both the governors and the governed. According to Wilkin, Cicero's res publica meant "commonwealth," "the public welfare," or "affair of the people," which is "the source and object of government, and indicates the scope of governmental authority. It is conserved by the exercise of justice in the broadest meaning of the word, and requires of every man an unselfish support."²⁸

It is thus no surprise that Cicero would be popular with early American political thinkers. Says Wilkin, "he was the first to use the

word 'constitution' in its modern sense of public law of the state or law by which government itself was limited. . . . He recognized that just as man has a higher self that controls his ordinary self, so the state should have a higher or permanent self, embodied in a constitution that would set bounds to its ordinary self as expressed in the government or the popular will at any particular moment."³¹

In the end, Cicero, Polybius, Aristotle and many others of classical antiquity contributed much to the political and constitutional thought from which the founders drew. The classics were not by any means the sole inspiration for the Constitution of 1787, but they were essential to the delegates understanding of the principles of mixed government which in a sophisticated form was to underlie the document. As summarized by Richard Gummere: "However important the training of these men [the delegates] was in local and provincial Realpolitik, there is no doubt that the Greco-Roman tradition was a basic source of the Constitution."³²

THE COMMON LAW TRADITION

A second branch of thought that contributed to the creation of the American Constitution and also one of the most ancient, was the English common-law tradition. This tradition had its basis in reality at least as early as the Norman conquest and in myth from "time immemorial" in the pre-Norman days of the supposed free and ancient constitution.³¹ Its importance for America should be underscored. Edmund Burke had noted in 1775 that more Americans were versed in the law than the people of any other country.³² Indeed, according to Bailyn, "English law--as

authority, as legitimizing precedent, as embodied principle, and as the framework of historical understanding--stood side by side with Enlightenment rationalism in the minds of the Revolutionary generation."³³

English lawyers and legal writers who contributed to this body of thought included Henry de Bracton (d. 1268), Sir John Fortescue (1394?-1476?), John Selden (1584-1654), Matthew Hale (1609-76), John Hampden (1594-1643), Sir John Davies (1569-1626), Nathaniel Bacon (1593-1660), Matthew Bacon (1700s?), Charles Viner (d. 1756), and, the most important, Sir Edward Coke (1552-1634) and Sir William Blackstone (1723-80). Of these men, the last two had the greatest impact on early American lawyers.³⁴

For eighteenth-century Americans Sir Edward Coke (1552-1634), Lord Chief Justice under King James I and long-time member of Parliament, was one of the preeminent exponents of the common law. Although certain of his contemporaries rose higher in governmental office, and some like Francis Bacon achieved fame in a greater range of activities, none of them "was as politically prominent and influential for so long a period of time" as Coke, "and none exercised such a profound influence on the subsequent development of English law." His writings "were avidly studied and reverentially cited by generations of English and American judges and lawyers." And according to J.P. Kenyon, he "has an assured place in the mythology of early American history as a spokesman for judicial review."³⁵

Coke's writings, particularly his Reports and Institutes of the Laws of England, were well known among American lawyers and politicians

during the founding era. Jack Greene says the Institutes "became the principal foundation for the English jurisprudential tradition as it reached Americans of the Revolutionary generation." Bailyn states that citations to Coke in the revolutionary literature were nearly as common as those to Locke, Montesquieu and Voltaire. Even such antagonists as James Otis and Thomas Hutchinson both "worshipped" Coke, though interpreting him variantly. As a student Thomas Jefferson may have complained, "I do wish the Devil had old Coke, for I am sure I never was so tired of an old dull scoundrel in my life," but he was later to say "'a sounder Whig never wrote, nor profounder learning in the orthodox doctrines of British liberties.'" The author of the Declaration of Independence preferred Coke to Blackstone, the latter who, with Hume, had "made tories of all England" and was "making Tories" of young Americans.³⁶

The primary contribution of Coke's writings to American constitutional thought lay in his outspoken defense of the common law in the face of royal opposition. He stood for the superiority of the law; his struggles with the King over judicial review took on a form of separation of powers. An earnest advocate of the "ancient constitution" of which the liberty and justice elements had been corrupted by the "Norman Yoke," Coke used various legal inventions extracted from medieval law to attempt to restrain the King in his use of the royal prerogative. For example, building on Selden's research, he succeeded in Parliament in having reinstated the medieval practice of impeachment of allegedly corrupt crown ministers--a concept which was to

find its way in both principle and practice into the American Constitution.³⁷

Coke paid politically for his boldness. Although having held numerous important positions at Court, he was dismissed as Lord Chief Justice in 1616 for advocacy of common-law rights. He remained active in Parliament, however, and was the moving force behind the Petition of Right of 1628, which successfully challenged Charles I's attempts to levy taxes without parliamentary approval, to imprison arbitrarily, and to force billeting and declare martial law. At a time when most Europeans found themselves subject to absolute monarchs and the Stuart kings were attempting likewise to consolidate power in the crown, the petition had a dramatic effect. It was Coke's intent to "leave the petition to his child as his 'greatest inheritance,'" as an assertion of the fundamental constitutional liberties of the English subject.³⁸

Critics of Coke, both contemporary and subsequent, have pointed out that the Lord Chief Justice either misread or skewed his interpretation of the common law for his own political ends. But, whether justifiable or not, eighteenth-century Americans read Coke as the law. They had no access to a great number of law books and commentaries, so they based what formal jurisprudence they entertained on the few books most prevalent. The seventeenth-century critics of the "ancient constitution" such as Henry Spelman and Robert Brady, "rarely found their way into American libraries."³⁹ According to Roscoe Pound, "however much Coke may have misunderstood and misrepresented medieval English law, it was Coke's version thereof, not the actual fourteenth- and fifteenth-century English law, that became the basis of the common

law of America." Says Pound, "No amount of historical criticism of Coke can alter that fact."⁴⁰

In spite of Jefferson's comment about Blackstone "tory"-izing America, no other English jurist contributed so much to the development of early American legal institutions, including the Constitution, than the Oxonian barrister. Sir William's Commentaries on the Laws of England (Oxford, 1765-69) were "widely regarded, in America as well as Britain, as the ultimate expression of British constitutional thought and practice."⁴¹ The second most frequently cited work in American revolutionary literature, the Commentaries were a synthesis of more than two centuries of English law and jurisprudence that supported the notion of English liberties being derived from the ancient, noble constitution. As such Blackstone merged the traditional jurisprudential emphases on life, liberty and property with the natural rights concepts of Locke et al., stressing Parliamentary government and common law as checks on royal tendencies to exercise arbitrary power.⁴²

The son of a "silkm̄n" who died before his child's birth, Blackstone was educated at Oxford, following which he entered the Middle Temple in 1741. He became a fellow at All Souls College in 1744 and a barrister in 1746. Frustrated as a legal practitioner, he returned to academic life in 1753 whence he commenced his famous series of lectures at Oxford on the common law. These lectures, as they developed after several years' presentation, were to become in their published form the Commentaries.⁴³

Although he was referred to by name only twice during the Constitutional Convention, his thinking was evident throughout.⁴⁴ He

was not a "republican;" however, Blackstone's strict adherence to the principles of constitutional monarchy provided ample supporting matter for delegates intent on creating a government whose powers were to be limited by law. His claim to renown being the Commentaries, it is in them that one finds his contribution to American constitutional thought.

Blackstone's constitution was a mixed constitution with checks and balances, but with no separation of powers. Executive and legislative functions were interwoven but the fact that the executive, in the form of crown ministers, was a part of the legislature served to check any overly-ambitious tendencies it might hold. For Blackstone, "sovereignty" and "legislature" were thus "convertible terms."⁴⁵

Students of Anglo-American constitutional history will find much else of the familiar in the Commentaries. To Blackstone personal liberty and property rights, with few exceptions, could not be taken by the king except according to the laws of the land. (He also agreed that men of property should generally govern.) He opposed bills of attainder and ex post facto laws. He supported freedom of the press. He asserted trial by jury as one of the ancient rights of Englishmen. The learned jurist also laid out in detail the components of the royal prerogative, some, but not all, of which found their way into the executive branch of the American government. To him the executive function included the powers to act as commander-in-chief of the armed forces, to choose ambassadors, make war and peace, make treaties, issue letters of marque, veto legislation, convene and dissolve parliament, regulate some economic affairs, enforce the law, appoint judges, establish courts, grant pardons, and appoint other officers.⁴⁶

In regard to these matters, among others, Blackstone was prevalent at the Constitutional Convention. According to McDonald, Blackstone and Hume "were quoted or paraphrased, or their ideas were reflected, in observations of delegates on all sides." For example, Gunning Bedford supported William Paterson's plan with a "Blackstonean legislative-supremacy argument." Hamilton buoyed his position for proportional representation with Blackstone. Gouverneur Morris was contemplating Blackstone's constitution when he suggested to the delegates that they either adopt the British constitution whole or reject it altogether. The framers used the terms "crimes and misdemeanors," "ex post facto," "judicial power," "due process," and "levying war" all in the sense that Blackstone had used them in the Commentaries.⁴⁷

In sum, the ideal of the free and ancient constitution reached its "apotheosis" in Blackstone.⁴⁸ As was the case with Coke, Blackstone did not always present the picture of the historical growth of the British constitution that scholars would paint today. But again as was with Coke, so it is in Blackstone's case--in determining early American constitutional principles, it is less important to know the historical reality of the development of these principles than it is to know in what terms they were received and understood by their implementers in the 1780s. It was thus in their espousal of a government limited in key aspects by an immemorial and thus authoritative law that Blackstone, Coke and the English common law jurists contributed to the American Constitution.

THE ENGLISH COMMONWEALTHMEN, WHIGS AND COUNTRY PARTY TRADITION

Not all European writers who contributed to American constitutional thinking were lawyers. Nor did they necessarily belong to the Age of Reason. Civic humanists such as Machiavelli and even royal apologists like Hobbes, for instance, have both been credited by scholars with contributions to the political science of the founders. In his desires for a republican unification of Italy, Machiavelli drew his ideas of a mixed constitution from the Greco-Roman classical republicans, especially Polybius. Hobbes, though not of a republican bent, nevertheless figured in the minds of constitutionalists who felt a need for a strong central government which if need be could enforce order upon its citizens. But the central question for Hobbes was one of power, not law.

Machiavelli and Hobbes were to influence or incite, respectively, one of the most important groups of contributors to Anglo-American constitutional thought--the representatives of the English oppositionist Whig or country party tradition.⁴⁹ The first generation of these writers were the republican Commonwealthmen who rose up during the English Civil War and Interregnum, sporadically reemerging during the Restoration, most notably Algernon Sidney, James Harrington, Henry Neville, and John Milton. Their heirs of the next generation, comprised of radical Whigs and Independent Tory critics alike, included John Trenchard and Thomas Gordon, and Henry St. John, Viscount Bolingbroke. Especially these, but many others as well, played a role in transmitting to eighteenth-century Americans the republican principles of these radical Englishmen.⁵⁰

The Seventeenth Century

The republican writers to emerge from the English Interregnum period were of great importance to American colonials and early nationalists for both the contributions of their own thoughts and the transmission to the founders of much of the thinking of Greece and Rome and of the civic humanists of Renaissance Italy. Most famous among them was Sidney (1622-83), who achieved his fame not so much through profounder thinking on his part than the others, but through his political and literal martyrdom. Implicated, perhaps unjustly, in the Rye House Plot to kill Charles II, Sidney was executed in 1683. His best known work, Discourses Concerning Government, published posthumously in 1698, outlined the principles allegedly for which he died.⁵¹

Though perhaps not as constructive as other Commonwealth works, the Discourses had important implications for American republicans. Drawing heavily on examples from the Bible, the classics, and general history, Sidney argued strongly for legal limitations to governmental power. His assertion of the right to rebel against tyrants was echoed hardly among colonial revolutionaries, for whom Caroline Robbins says the Discourses "was more of a Bible" than any other seventeenth-century work, outside of Milton's.⁵²

Sidney's belief that political systems should change over time and were not necessarily transferable from one period and place to another was reiterated by American Federal Convention members who balked at attempts for a wholesale transfer of the English constitution to the United States. He further suggested that creating good government

required experimentation, that only the wise could frame good constitutions, and that popular governments, for all their risks, were superior to tyrannies because participation of enough civic-minded men could ultimately cause their reform. Each of these ideas was to find voice among the Philadelphia delegates.⁵³

Another English republican, who Caroline Robbins says "inspired many constitution makers," including Americans, was James Harrington (1611-77). Best known for his political romance, The Commonwealth of Oceana (1656), Harrington was an Oxford-educated republican who served Charles I while the King was a prisoner. Suspected of royalist sympathies, he was removed from Charles' retinue and imprisoned for a short time for refusing to swear against assisting the King to escape. Despite his friendship with the Monarch and his shock at Charles' execution, Harrington remained faithful to his republican principles. Although Oceana did not greatly please Cromwell--who confiscated the manuscript for a time--the work was to become a model for Commonwealthmen for the remainder of the century.⁵⁴

Influenced by Machiavelli, Oceana put forth Harrington's concept of the ideal constitution. His contribution to Anglo-American republican thinking lay primarily in his views of property ownership as it related to public virtue (the essential element of republican government) and in the notion that executive power should be rotated. According to Harrington, public virtue, and hence a republican constitution, depended on men being self-sufficient or independent, which in turn was possible only through their possession of ample, though limited, private property, particularly land.⁵⁵

It was Harrington who created the notion of the "agrarian law"--that is, the correspondence in a society between the distribution of land and the distribution of political power as a basic principle of sound constitutionalism. He noted that feudalism had unequally distributed land and thus called for its redistribution. Harringtonian thinking would prove important for those delegates who viewed man as unavoidably corruptible but who saw in Oceana, or America, because of its frontier, an ever expandable agricultural base by which corruption could be curtailed. Harrington further fueled the American "quasi-religious" preoccupation with virtue in his support for a naturally aristocratic senatorial class that would check political instability.⁵⁶

Henry Neville (1620-94) was a good friend of Harrington who, in fact, perhaps helped him compose Oceana. Like Harrington he was an Oxonian who, also like Harrington, took the "grand tour" in his youth which included first-hand study of the former Italian city-states. He returned to England during the Civil War but though a republican did not launch his public career until after the execution of Charles I, when he was elected to Parliament. Opposing the Protectorate, he lived in "semi-forced retirement" until 1655 at which time he again became active in republican circles. Unlike Harrington, Neville was not arrested at the Restoration. He did come under suspicion for conspiracy in 1663, was arrested, but released to go abroad, returning in 1668.⁵⁷ Neville's republican influence was largely conveyed through his translation of The Works of Machiavelli (around 1675) and, especially, his composition Plato Redivivus (approximately 1679). The latter,

written in response to England's "Exclusion Crisis," the attempt to keep James II from the Throne, called for political reform to steer the country between the extreme positions of the supporters of James of York and the Duke of Monmouth. Modeled on Plato's dialogues, it also resembled Oceana in its linking empire with property and its emphasis on the importance of historical studies for students of government.⁵⁸

Plato called for legal restrictions on the monarchy which would prevent the abuses of power feared from James' portended ascendancy of the Throne. He suggested England's problems were economic at their root. The King, in this age, required the people's support and lacked essential executive independence so the balance among Crown, Lords and Commons had been lost and could only be restored by correlating regal power to property distribution. This suggested the king might have to give up certain prerogatives in exchange for property. The establishment of a rotating ministerial council to assume certain regal powers would enhance governmental stability.⁵⁹

Harrington and Neville were to remain important for the eighteenth-century New World. In the end, according to Robbins, "both the Oceana and Plato Redivivus were to be studied by the Americans considering a constitution in the days of George III."⁶⁰

A final noteworthy seventeenth-century Commonwealthman was John Milton, not so much as poet but as "radical tractarian."⁶¹ Between the years of the elegiac "Lycidas" (1637) and the epic Paradise Lost (1667), Milton's republicanism flourished. His political prose included Areopagitica (1644), an argument for freedom of the press; The Tenure of Kings and Magistrates (1649), which argued that monarchs retained their

divine right only while fulfilling God's purposes; Eikonoklastes (1649), an attack on the Eikon Basilike which was attempting to set up Charles I as a holy martyr; first and second Defences of the English People (1651 and 1654), defending the execution of Charles I and the subsequent English political experiment, and The Ready and Easy Way to Establish a Free Commonwealth, (1660) a defense of republican principles somewhat undiplomatically published on the eve of the Restoration.⁶²

Not unexpectedly and like many of his companions, Milton fell from favor upon the return of Charles II. Imprisoned for a time, he was apparently released through the influence of friends, quite possibly Andrew Marvell, another republican poet of the age. Unlike Sidney and Neville, he was not to publish on the Commonwealth theme following the Restoration, but his work reemerged during the next century and a half with each surge of English and American republicanism. As Caroline Robbins notes, for American revolutionaries Milton's works were among the most important seventeenth-century writings. George F. Sensabaugh says Adams, Franklin and Jefferson "marveled at the breadth of his mind." He places him after Harrington, Locke, Sidney, Hoadly, Montesquieu, Polybius and Cicero for his influence in American politics, but nevertheless claims for Milton a special function. The language of Paradise Lost, for instance, was frequently used as a witness for liberty and to some extent gave cosmic proportions to the revolutionary conflict and to the birth of the new nation.⁶³

It must be noted for all of this that Milton was more an advocate for republican liberty than for constitution-making. John Adams strongly rejected Milton's suggestion that governments be directed by a

senate of good and wise men who would remain in office indefinitely.

Sensabaugh suggests that Milton's contribution to the Constitution was more in terms of the republican spirit of liberty with which he inspired early Americans than in any specific proposals he may have had for the governmental machine.⁶⁴

Milton was only one of other influential Commonwealthmen from this era who could be cited for their contributions to American political ideology, but he is perhaps the most frequently cited alongside Sidney, Harrington and Neville, by Bailyn, Wood, and Robbins and other examiners of the intellectual roots of Anglo-American republicanism.

In sum, there is little question that the Commonwealth writers were read, pondered on and frequently quoted during the formative period of the American republic and were indeed contributors to American constitutional thinking. Caroline Robbins summarizes their influence:

The constitution of 1787 was and remains the Commonwealthmen's most lasting memorial. The rule of law, secured by a written constitution, and eventually by a bill of rights; by checks and balances; by separation of powers; and these all in turn guarded by the ephors of a supreme court, would surely have delighted the seventeenth-century republicans. They would have been surprised of course, but perhaps not altogether disconcerted, by the greater participation of the people in policy decisions, by an extending franchise and by the evolution of a less hierarchical society brought about by the indigenous circumstance of the New World. They would have commended the divorce of church and state, and would have approved the many restraints upon government at state and federal levels. . . . Certainly in the enactments of several state constitutions in 1776, as well as in the United States constitutional convention of 1787, the republicans would have found much for which they could justly claim credit.⁶⁵

The Eighteenth Century

The eighteenth century not only revived the republicanism of the seventeenth-century Commonwealthmen, but was particularly important for the transmission of their republican thinking to America. Once again notions of civic virtue, political corruption and fears of conspiracy in high places became the topics of political polemicists in England, which were in turn transmitted to colonials to use as they felt needful. Representative of and among the most important of the eighteenth-century "republicans" were Trenchard, Gordon and Bolingbroke.

Trenchard and Gordon

The verdict is virtually unanimous that Trenchard and Gordon were essential to the form American republicanism was to take in the eighteenth century. Bailyn, Wood, Robbins, McDonald, Pocock, David Jacobson, Clinton Rossiter and Stanley Katz all cite these two radical Whigs as primary conveyers of popular political philosophy to America. Jacobson, who has edited a collection of their Independent Whig articles and Cato's Letters, seconds Rossiter that, as popularizers of political ideas, Trenchard and Gordon were more important to the colonials than Locke. Robbins has said the same. In listing Trenchard among the significant Commonwealthmen to influence American founders, she stresses that Americans "gained as much from the moderators and commentators as from the Whig classics themselves." Bailyn says Trenchard and Gordon were the most important of the eighteenth-century Commonwealthmen who "more than any other single group of writers . . . shaped the mind of the American revolutionary generation." Katz cites Trenchard as

particularly important for the development of notions of mixed government and separation of powers.⁶⁶

John Trenchard (1662-1723), educated at Trinity College, Dublin, practiced law until an inheritance and a favorable marriage left him free to write. His early significant works included a joint undertaking with Walter Moyle, "An Argument Showing . . . a Standing Army . . . inconsistent with a free Government," published in 1697, followed by "A Short History of Standing Armies in England" (1698). In 1719, he met Thomas Gordon, who was to become his best friend. Although Trenchard was acknowledgedly the political inspiration in their work, Gordon, an erudite Scotsman (of whose early life little is known), was to achieve fame in his own right as the translator of the writings of Tacitus and Sallust, with all their republican implications.⁶⁷

Together the two men produced The Independent Whig (1721), a weekly paper attacking the Anglican High Church and the establishment of religion in general. More importantly for Anglo-American constitutionalism, they collaborated from 1720-1723 on Cato's Letters, a highly readable series of political diatribe published first in England and then republished and quoted time and again in the American colonies during the revolutionary crisis. Cato's Letters, appropriately named for the great defender of the Roman Republic, grew out of the Whig response to the "South Sea Bubble," the disastrous collapse in 1720 of the English joint stock company that uncovered serious corruption among Crown ministers. But the Letters soon broadened to such topics as the nature of liberty, tyranny, public virtue, the importance of freedom of speech, and issues regarding Catholicism and the established church.⁶⁸

Cato argued that man was intended to be free, that "liberty is the unalienable right of all mankind," and that corruption and faction posed dangers to liberty.⁶⁹ He discussed the purposes of government: to preserve liberty and guarantee the "good of the governed."⁷⁰ He reiterated the need to curtail the power of rulers--"they act most prudently, who, supposing that" a man will misuse power, "inclose him within certain bounds, and make it terrible to him to exceed them."⁷¹ In order to preserve "publick liberty," Cato echoed the Harringtonians in calling for "frequent fresh elections of the People's Deputies."⁷²

And Cato declared,

Nothing on earth is of a more universal Nature than Government; and every private Man upon Earth has a Concern in it, because in it is concerned, and nearly and immediately concerned, his Virtue, his Property, and the Security of his Person: And where all these are best preserved and advanced, the Government is best administered.⁷³

The implications of these arguments for American republicanism and specifically for the creation of the Constitution are not difficult to ascertain. As Forrest McDonald suggests the thinking of these two and the Whig and country party politicians "permeated the thinking of the Framers far more deeply than they cared to admit--and perhaps more deeply than they knew."⁷⁴

Viscount Bolingbroke

A final noteworthy eighteenth-century contributor to American republicanism might just as easily be discussed with the Enlightenment rationalists. He is further anomalous in that he was not a Whig. But in their Country-Party opposition to Walpole's government, Henry St.

John, Viscount Bolingbroke's, "savage, bitter, relentless attacks were indistinguishable from Cato's polemics on major points of political criticism." His weekly and semi-weekly paper, The Craftsman, "in fact, quoted the writings of Trenchard and Gordon freely, and otherwise, in almost identical language, decried the corruption of the age and warned of the dangers of incipient autocracy."⁷⁵

Like Trenchard and Gordon, Bolingbroke's life and works are not well known in our day. This is more surprising in Bolingbroke's case, however, because among his contemporaries who are well known to us, Bolingbroke was famous or infamous, as the case may be. Swift and Pope venerated him, the latter calling him the "greatest man in the world, either in his own time, or with posterity." Samuel Johnson, on the other hand, excoriated him as "a scoundrel, and a coward."⁷⁶ One of his biographers gives two reasons for Bolingbroke's posthumous decline in prestige: he was both a Tory, the losing party throughout most of his later political life, and a religious skeptic, at a time when the English-speaking world held such skeptics in disrepute.⁷⁷

Born in 1678, Henry St. John prodigiously became a member of Parliament at age twenty-two and England's Secretary at War at age twenty-six. Though he lost his seat in the Commons for about two years, in 1710 the Tories won the general election and he was appointed Secretary of State for the Northern Department. Two years later he was created Viscount Bolingbroke. His significant political writings began during this period of his Cabinet membership when he made contributions to the Tory paper The Examiner.

When the Tories fell from power with the accession of George I, Bolingbroke fled to France amid accusations of treason resulting from Tory support of James Edward Stuart. Breaking with the Pretender a year later, however, the young exile embarked on a ten-year period in France of historical, philosophical and political study and association with French heroes of the Enlightenment, including Voltaire. Joining the Club de l'Entresol, he participated regularly in writing, presenting and discussing works of Enlightenment philosophy.

In 1725 Bolingbroke returned to England, having received a royal pardon and restoration of his estates. In 1726 he, with William Pulteney, launched The Craftsman and thence began his historic opposition to the Walpole ministry. In its appeal to both Whig and Tory, Bolingbroke's paper led a call for national political reform. However, again incurring political disfavor, he retired anew to France in 1735. Here he stayed for about nine years, producing some of his best-known writings, including Letters on the Study and Use of History and The Idea of a Patriot King. In 1744 he returned to England but never again to political power; he died in 1751.⁷⁸

According to Forrest McDonald, Bolingbroke's writings were among the "more important second-hand sources of republican thought imbued by Americans."⁷⁹ His important prime contributions to the thinking of the constitution makers were on the relationships among virtue, independence, republican liberty and real property ownership. McDonald says it was he and Trenchard and Gordon, rather than Harrington directly, who contributed most to the philosophical veneration for agricultural-based life in the American South (except in the cases of

Madison, Mason and Jefferson). It was also from Bolingbroke that Montesquieu derived his conception of the British constitution, the latter through whom this conception passed on to the Americans. To a large extent, McDonald identifies the thinking of Bolingbroke and Montesquieu together.⁸⁰

Bolingbroke's "patriot king" was a king for whom personal and public virtue was all important. Through a limited and balanced government, headed up by a virtuous monarch, the Viscount believed that the baser passions of man could be held in check. Unlike Hume, he did not allow that the darker side of human nature could itself be worked into a system of effective government. Hume, for instance, believed the "spoils system" necessary for the party in power to maintain constitutional balance; whereas, Bolingbroke railed against the notion of placemen. According to MacDonald, Bolingbrokeans in the Convention, like Butler, Rutledge, C.C. Pinckney, Gerry and Sherman, thus insisted that congressmen during their terms not be eligible for any other office.⁸¹

Bolingbroke, like Trenchard and Gordon and their intellectual progenitors from the seventeenth-century Commonwealth, was key to the developing political philosophies of the American revolutionary-constitutional era. McDonald cites only Montesquieu as frequently as Bolingbroke for his contribution to American constitutional thought. Together the men of the Commonwealth tradition united the political strands of the other contributing traditions--classical republicanism, the English common law, Enlightenment rationalism, and Puritan covenant theology.⁸²

THE ENLIGHTENMENT

The "Enlightenment," though a relatively late term in English usage, has come to describe that period, roughly the eighteenth century, when the contributions of rational science transcended and to some degree replaced older, more traditional philosophical and religious notions as the first principles of society. Among the intelligentsia "reason," grounded on observation, became the only reliable basis for the discovery of truth, and ideas that had as their sole foundation the authority of clerics and scholastics fell into disrepute. This phenomenon has traditionally been seen as centering on the French philosophes, e.g. Voltaire, Montesquieu, Diderot, and d'Alembert, but has also come to describe the surge of ideas to come at about the same time from Scotland. It has recently been further extended by some scholars to include the slightly earlier period in England that produced Newton and Locke, acknowledged forerunners of the philosophes.⁸³

When thus broadly described, the Enlightenment could hardly fail to be seen as a significant source of political thought for American colonials and early nationalists. Some, like Franklin and Jefferson, were themselves ardent participants in the scientific and literary happenings of the age. It is true that some of the French philosophes best known to early Americans, as well as to us, did little to advance American constitutional thinking, particularly Voltaire and Rousseau. But for this the Constitution was no less a product of Enlightenment thinkers. Wills says, "the Constitution was an ingeniously constructed Enlightenment machine of 'counterpoises'; and it was recognized as such in Europe." As Rousseau, Condorcet, Lafayette and Jefferson

illustrated, "constitution-making was a favorite Enlightenment exercise."⁸⁴

Enlightenment donors to American political thinking were many--too many to exhaustively review the contribution of each. Some like the Swiss jurists Jean Jacques Burlamaqui (1694-1748) and Emmerich de Vattel (1714-67) were well known to Americans as exponents of natural law and the law of nations. The French Abbès Mably and Raynal made important contributions in political history. The writings of Italian criminologist Césare Beccaria (1738-94) laid a foundation for the rational reform of legal institutions.⁸⁵ But of the many Enlightenment writers to enlighten the creators of the Constitution, three stand out as sufficiently important as to describe them here as more or less representative of the Age-of-Reason contributors to republican institutions. They are, from the Enlightenment's dawning years, the Englishman John Locke (1632-1704) and from the mid-"siecle de lumières," the French Baron de Montesquieu (1689-1755) and the Scottish economist and historian David Hume (1711-76).

John Locke

Locke, it is true, is not easily categorized in the scheme here set forth of intellectual traditions influencing the American Constitution. He shared some vital political beliefs with the Commonwealthmen, but not such as to place him with Sidney or Harrington. He was debatably not a radical, but he was a staunch Whig, supporting both the attempt to exclude James II from the English throne and the successful movement to pass the crown to William of Orange. He was not a lawyer, but his advocacy of the rule of law placed him in the English

jurisprudential tradition of Fortescue, Hooker, Hampden and Coke.⁸⁶ And the fact that he was a seventeenth-century Englishman instead of an eighteenth-century Frenchman, or even Scot, has made some scholars slow to place him in the mainstream of the Enlightenment.

However, recognizing a general difficulty in this discussion in labeling the thinkers behind Anglo-American republicanism, perhaps especially Locke, it is probably with the intellects of the Enlightenment that he would feel most comfortable. His epistemological An Essay Concerning Human Understanding was to lodge at the heart of the empirical, rational view of the universe taken by the philosophes. His renowned advocacy of religious toleration, though not the skepticism of Voltaire, Hume or Bolingbroke, nevertheless anticipated and influenced eighteenth-century religious thinking and history; Voltaire was said to have idolized him.⁸⁷ Most important for the discussion here, the "liberal" political viewpoint of his Treatises of Government was to both influence and find a soulmate in the revolutionary and constitutional thinking of the American founding era.

A word about Locke, the man: a member of an English landed family, he was educated at Oxford where he remained for many years as a don. He chose medicine from among his many interests as his primary field. Although "he never became a full Doctor of medicine," he succeeded in obtaining one of the medical studentships reserved for doctors at Christ Church and it was as a physician that he made many of the contributions of his professional life.⁸⁸

It was through medicine that he met Anthony Ashley Cooper, 1st earl of Shaftesbury, the treatment of whose peculiar health problems

brought Locke recognition and into Shaftesbury's circle as his personal physician, eventual close friend, confidant, advisor and tutor to his grandchildren. Locke's close adherence to Shaftesbury's Whig politics led to the physician's temporary continental exile and to his eventual dismissal from Oxford in 1684, but it also served as the impetus to his writings on political philosophy. In fact, scholars now believe the Two Treatises were actually written to support the Earl's political intrigues during the Exclusion Crisis rather than as an ex post facto justification of the Glorious Revolution as was so long supposed.⁸⁹

It is difficult to say without arousing controversy just how much influence Locke had on the development of United States governmental institutions. For much of this century Locke was considered the quintessential political philosopher of the American founding.⁹⁰ Since the 1960s, however, historians have somewhat deemphasized Locke's importance for the early American republicans. In Inventing America, for example, Garry Wills has disputed Becker's thesis of Locke's influence on the Declaration of Independence. George Mace says Locke's "influence is conspicuously missing in the Federalist Papers." Vetterli and Bryner admit the English philosopher as important for the Revolution but suggest he has been obscured by Montesquieu in the making of the Constitution.⁹¹

But to suggest that Locke was not everything to the founders is not to say that he was nothing, and the rhetoric of his modern detractors may lull the unwary student into missing his importance. Forrest McDonald suggests of the ideological historians that, "in their eagerness to downplay the influence of John Locke--once greatly

overrated--they have neglected the importance of theories of natural law and natural rights."⁹² So Locke cannot necessarily be considered the sole and soul inspiration behind the Constitution, but neither can any credible examination of the intellectual roots of the document ignore the man's great contribution.

In his book Novus Ordo Seclorum, McDonald has made one of the most balanced assessments of Locke's contribution to the Constitution. According to McDonald some of the obscurity of Locke's thinking in the Convention lies in it going largely uncredited. He was the predominant voice for Americans on natural rights, but "the contract and natural rights theories of John Locke were repeatedly iterated without reference to their source."⁹³

On natural law, Locke was the best suited of the great theorists--Grotius, Pufendorf, Vattel, or Burlamaqui--for the purposes of the founders who had sought political independence from Britain. In turn he would have much to say for the creators of the Constitution. For Locke, there were three fundamental bases for natural law: man's duty to God (the fount of the other bases), the given that humankind must be preserved, and the given that man must preserve society. The third of these was especially important. Man could not live alone; he must live in society. The state of the absence of organized society--or state of nature--could not endure indefinitely.

Man acquired property in the labor of his hands, but natural law limited the amount of property that could be accumulated, waste being unlawful. However, the nonperishable aspect of money allowed man, in time, to accumulate more property. This being the source of man's

covetousness and ambition created the necessity for man to enter into civil society, that is, to preserve his life, liberty and estate from the vicious tendencies of man in nature.

The creation of civil society required that man have "settled, known law;" that he establish a "known and indifferent judge," and that he give the laws "due execution." Such a government created by the common consent or mutual compact of those to be governed could not legitimately violate their natural rights. According to McDonald, these ideas did not necessarily accord with the "society of acquisitive individualists" that emerged after the Revolution, but did appeal to the side of Convention members who feared man's ambitious nature. The implication for some was that the delegates were in the process of creating the social contract by which Americans were to be governed, a contract whose necessary terms included checks on the ambitious tendency of human nature.⁹⁴

Locke's state of nature was referred to and variously interpreted on more than one occasion during the Convention. James Wilson asserted that the "states are not more unwilling to purchase [federal liberty], by the necessary concession of their political sovereignty, than the savage is to purchase civil liberty by the surrender of his personal sovereignty, which he enjoys in a state of nature."⁹⁵

At least twice during the debates, Luther Martin spoke to say that he saw the Revolution as having placed Americans in a state of nature with regard to the separate states. The social compact to be entered into, thus, in Martin's view, was not to be among individual persons, but was to be among the states. During the course of a speech that

lasted for more than an entire day's meeting, he read from Locke, apparently at some length, to prove the equality of the states in the state of nature, the implication being that equal representation in the legislature would be essential under the new constitution. Alexander Hamilton and Wilson, however, were among those to disagree with Martin's interpretation of the Revolution's results.⁹⁶

This was not to say that the delegates rejected Locke on equality--his notion of the principle lay at the heart of their assumptions about limiting the power of governors over the governed. For Locke, no man had a natural right to rule over another. In addition, the tabula rasa theory of learning suggested all human beings began the same, with the same innate ability to develop the faculties. To at least Hamilton, this created serious inferences against the institution of slavery, which was such a sore point in the Convention.⁹⁷

In addition, Locke believed, like many of the delegates, that the legislature had the sole power to make laws and that legislators were responsible to the people. He referred also "vaguely to separation of legislative, executive, and federative (or foreign affairs) powers in his Second Treatise."⁹⁸

In the end, historians may be correct to insist that Locke's influence was felt in America primarily through his interpreters, especially, Trenchard and Gordon.⁹⁹ But the interpreters would have had nothing to interpret without the man himself. Although, as in every case, his influence is difficult to trace directly, there is little question that he did much to lay out many of the most important assumptions behind the constitutional thinking of the framers.

Montesquieu

Another important Enlightenment contributor to the Constitution, and one who has generally been credited as the thinker behind some of the document's most basic principles, is Charles Louis de Secondat, Baron de la Brede et de Montesquieu (1689-1755). Born of the French aristocracy, he studied law from 1705 to 1708 at the University of Bordeaux, was admitted to practice as an advocate in the Parlement of Bordeaux, then continued his legal studies in Paris from 1709 to 1713. In 1716 he inherited his name, title and an important judicial post from his uncle. By this time, in addition to his legal interests, he had begun to prove himself an homme de lettres and a worthy contributor to the sciences, earning his election to the Academy of Bordeaux in 1716 and its directorship two years later. In 1721 he produced the well-known satires of Parisian life, the Lettres persanes, and in 1734 the Considérations sur la grandeur et la decadence des Romains, which sought to show how the loss of public virtue in a democracy led to tyranny. Meanwhile, in 1728 he had been accepted into the French Academy; he toured Europe from 1728-31, which included an extensive stay in England; and he became a member of the Royal Society and a Freemason in 1730-31.¹⁰⁰

From 1734 to 1748 Montesquieu wrote his most famous work, The Spirit of Laws (L'Esprit des lois), an analysis of the relation between human and natural law. Though it met with opposition from the Catholic Church, through this book the writer was to have wide influence in England and America--says Carrithers, "Montesquieu was practically required reading for eighteenth-century statesmen and political

philosophers on both sides of the Atlantic." According to Forrest McDonald, "American republicans regarded selected doctrines of Montesquieu's as being virtually on a par with Holy Writ."¹⁰¹

The constitutional doctrine for which Montesquieu has been most credited, although not undisputedly, is that of the separation of powers--the notion now so basic to American constitutionalism of separating within the ideal government, the executive, legislative and judicial functions. The baron did not claim to originate this idea, however, and scholars have found seeds of the concept in Harrington, Locke, Trenchard, Bolingbroke, Blackstone or even Polybius. But Montesquieu revived and uniquely elaborated it.¹⁰²

Paul Merrill Spurlin, who has done the most complete work on Montesquieu's influence in America, agrees with the critics that the concept of separation of powers existed in theory and some practice before the appearance of the Frenchman's celebrated book. He notes that violations of the principle were protested in Maryland in 1720 and in New Jersey in 1744. And, he points out, the concept was alive and well in the Virginia and Massachusetts constitutions of 1776 and 1780 respectively. According to Spurlin, however, Montesquieu did the most to spread the doctrine to the Americans. He notes that the philosophe's particular tripartition of powers is not found in Locke and that, though found in the Commentaries, Blackstone derived it from Montesquieu. In addition, with regard to Blackstone, the theory is "lost" in the Commentaries--that is to say, it is dispersed throughout and nowhere given complete and coherent treatment.¹⁰³

Furthermore, as McDonald agrees, Montesquieu derived his concept from a misreading of Bolingbroke's description of the English constitution. The fact that separation of powers in the way Montesquieu explained it never existed as an objective reality in England, prevented the colonists from arriving at the concept through abstract derivation. In every case examined by Spurlin but one, he notes that between 1760 and 1800 discussions of separation of powers always referred to Montesquieu. David Carrithers adds that it fell "to a Frenchman to explain the British constitution to British Subjects."¹⁰⁴

Surely Montesquieu made the most clear statement on the principle of separation up to that point:

Miserable indeed would be the case, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, ¹⁰⁵ and that of judging the crimes or differences of individuals.

That the delegates knew Montesquieu's work cannot be doubted. "By 1787 the Spirit of Laws had become an 'American' classic," says Spurlin; "it was cited in the Constitutional Convention at Philadelphia in the debates on the Constitution and in the state ratifying conventions."¹⁰⁶ The delegates referred to it to support their ideas of the principles of a federal republic, including the notion that such a government was best suited to small nations. They also cited Montesquieu on the essentiality of virtue to a republic. Montesquieu was cited at least seven times in the Convention, particularly by Hamilton, Edmund Randolph, Pierce Butler, and on more than one occasion each by James Wilson and James Madison. According to Spurlin, Madison also referred

to Montesquieu in his preparatory notes for the Convention. And elsewhere Madison compared the French philosopher's role in the "science of government" to that of Bacon in natural philosophy; he believed that Montesquieu originated the idea of separation of powers--"the sacred maxim of free government."¹⁰⁷

In the end, as with the other thinkers here discussed, perhaps Montesquieu's influence on the Constitution cannot be definitively traced. But if not wholly responsible for the concept of separation of powers and other important ideas of the document, it is agreed that his ideas were disseminated in America and there "fell on fertile soil." Spurlin puts it best:

The French thinker's doctrine that made tripartition of powers the sine qua non of liberty helped give a definite and permanent form to American constitutional thought. He supplied the verbal formula for a strongly marked trend. He provided the rationale, and the broad outlines of a structure, for a native concept that had long been in the process of development. This is how Montesquieu influenced the Founding Fathers and the American Constitution.¹⁰⁸

Hume and the Scottish Enlightenment

If the French philosophes came via their writings to the American eighteenth century, they did not come alone. The Scottish thinkers of the era represented a different strand of the Enlightenment tradition, so important to the development of American republicanism as to have caused some scholars to give it the preeminent chair.¹⁰⁹ Francis Hutcheson, William Robertson, Thomas Reid, James Beattie, Lord Kames, Adam Smith, Adam Ferguson and David Hume are the most well known among Scots whose writings on political economy reached the shores of the New World during the revolutionary and early national periods.

Hutcheson, who lived from 1694 to 1746, is considered by some to be the father of the Scottish Enlightenment. A professor of moral philosophy at Glasgow University, he drew from the classics, James Harrington, Grotius and Pufendorf to produce his philosophy of moral sense. Although sharing with Locke the notion of the social contract, he departed from his English predecessor in his explanation for the basis of the contract. To Hutcheson, rather than being founded on reason, the contract was a product of the moral sense, innate and God-given in all men, which prompted human beings to act for the benefit of one another. This sense was by its nature benevolent and through it people gained their comprehension of good and evil. As opposed to Locke's state of nature which emphasized individually autonomous man entering into the contract through ratiocination, it was for Hutcheson the natural urgings towards social interdependence of the moral sense that caused men to enter into society and create civil governments.

Hutcheson differed from the civic humanists in attempting to show that commercial society was consistent with civic virtue, and not necessarily a corrupting force. Self-love and, hence, self-interest, was an essential component of the moral force, following the promptings of which was in itself virtuous and socially productive. With this Hutcheson became the jumping off point for the other Scottish philosophers of the century.¹¹⁰

Another but later professor of moral philosophy at Glasgow, Thomas Reid (1710-96) turned Hutcheson's "moral sense" to "common sense," and in so doing became with James Beattie the founder of the Scottish school of that name. To Reid, common sense was the "shared wisdom of the

community." More rational than innate (albeit intuitive), it was common sense that could endow the rural agriculturist with virtue superior to that of the social sophisticate. Related to the agrarian law of the English civic humanists and Commonwealthmen, this notion would find an ear among the patrician landowners of the American South. In addition, John Witherspoon, who was directly responsible for the republican educations of a number of the founders including Madison, was an adherent of Reid's philosophy.

Although the Scottish philosophers of the eighteenth century held sufficient in common to describe them coherently as a group, there were differences among them and much of the work of Hutcheson and Reid was intended to attack David Hume (1711-1776), the religious skeptic and "philosophical historian" who Jack Greene calls "certainly the most sophisticated and impressive thinker to emerge from any part of the eighteenth-century British world."¹¹¹ His apparent influence on Madison and Hamilton merits for him special treatment.

As a contributor to American republican thinking, Hume was also important. However, as his writings stirred controversy in his day, so have recent discussions of his contribution to American constitutionalism promoted debate. For example, in the September 1985 symposium of the British Institute of the United States on "The Influence of the Scottish Enlightenment on the U.S. Constitution," the question arose of whether Hume had surpassed Locke in the eyes of historians as the prime contributor to American republican thought. Some suggesting the affirmative mentioned Douglass Adair, Clinton Rossiter, Gerald Stourzh, and Garry Wills as among those scholars to

have elevated his status in regard to the founders. Other participants retorted, however, that Hume and Locke were likely to have had much more in common than those who have placed a wedge between them suggest.¹¹²

In the end, determining whether Hume did more than Locke to influence the Constitution seems less important than, to the extent possible, simply assessing his contribution. He was a native of Edinburgh. Attending but not graduating from Edinburgh University between 1723 and 1726, he continued his studies on his own. Though ostensibly preparing for a career in law, contrary to family expectations, he developed an aversion to legal studies and immersed himself rather in the study of philosophy and general learning. While in his early twenties he produced his Treatise of Human Nature, published in 1739, to what was to him a disappointing reception. His Essays, Moral and Political, followed with some success, however, in 1742.¹¹³

Hume's manifest religious skepticism kept him from securing employment with the educational institutions of his time, so the young philosopher made his early living as a tutor to the offspring of various genteel families, in the meantime continuing to write. In 1748 he published what was eventually to become his An Enquiry concerning Human Understanding. He again tried to obtain an academic post in Edinburgh in 1751, but though unsuccessful soon brought forth his An Enquiry concerning the Principles of Morals and his successful Political Discourses, the latter which "had considerable influence on some of the Founding Fathers of the United States of America."¹¹⁴

Accepting a position as Librarian to the Faculty of Advocates in Edinburgh in 1752, Hume found time to write his History of England, which was to become a best seller. Voltaire praised it; Jefferson rejected it for its Tory sympathies, but it went a long way to making Hume financially successful as well as famous. (When Hume was offered excellent remuneration for a final volume to the series, his biographer says the Scot replied, "I must decline not only this offer, but all others of a literary nature for four reasons: Because I am too old, too fat, too lazy and too rich.")¹¹⁵ In 1763 he accompanied the Earl of Hertford as his secretary to Paris, returning in 1766 to Great Britain with a protege in Jean Jacques Rousseau. In 1767 Hume was appointed Undersecretary of the Northern Department of the Secretary of State, which position he held for two years until his retirement to Edinburgh. Here he lived, esteemed but ill, until his death in 1776.¹¹⁶

According to Douglass Adair, Hume provided "the basis of a science of human behavior." To the Scottish philosopher all people everywhere and at all times were essentially the same and would act the same. If one wanted to understand the Greeks and Romans, therefore, it sufficed to study the English and the French. By this reasoning, Adair said, Hume laid the basis for a "science of politics" which "was integral to the whole discussion of the necessity for a more perfect union that resulted in the creation of the American Constitution of 1787."¹¹⁷

Hume also challenged Locke's state of nature as a historical event. Instead he found most nations had been founded through force and oppression. Unlike Jefferson but like Hume, James Madison did not believe in the benefits of occasional revolutions that would return

subsequent generations to a state of nature. He believed instead in Hume's world of the gradual, natural progress of nations.¹¹⁸

According to Adair, Madison, "the most creative and philosophical disciple of the Scottish school of science and politics in the Philadelphia Convention," looked to Hume for his theories of the extended republic. The most important source of thought that went into Federalist No. 10, the essence of which Madison wrote before the Federal Convention, was Hume's "Idea of a Perfect Commonwealth," in which the Scottish thinker "demolished the Montesquieu small-republic theory."¹¹⁹ Hume's and the philosophes' thought were opposed on this point, with the Scotsman taking the position that, although large republics were harder to form, once formed they were much harder to destroy. Hume believed that the initial difficulties of founding a large republic could be surmounted through the leadership of a great figure, which the Americans, of course, conveniently found in Washington.

Hume further believed that democracies were unstable and that aristocracies were better suited to maintain public order, but were oppressive. "In a large government," however, "which is modelled with masterly skill, there is compass and room enough to refine the democracy, from the lower people, who may be admitted into the first elections or first concoction of the commonwealth, to the higher magistrates, who direct all movements."¹²⁰ In Hume, Madison found the answer to Montesquieu.

PROTESTANT CHRISTIANITY AND PURITAN COVENANT THEOLOGY

Characterizations of the eighteenth century are frequently so illuminated by the Enlightenment that they convey the impression that religion was of secondary importance for America's founders. The contrasting popular but superficial images of pious seventeenth-century Puritans and liberated revolutionaries a century later promote further the vague feeling that constitution-making in America had nothing more to do with religion than to ensure that religion and state kept out of each other's affairs.

Little could be further from the truth. Religion, albeit somewhat transformed, was nearly as pervasive in eighteenth-century America as it had been in the seventeenth. As Vetterli and Bryner point out, "the Founders, as a whole, were deeply religious men." Even some of the less orthodox, Jefferson and Franklin among them, had strong moral and religious principles that they derived from Christianity. These men were "religious," but not necessarily "sectarian." James Madison was reared and educated in a powerfully Christian culture. His beliefs in the individual worth of the human soul and its relationship to deity permeated his political principles and were particularly consistent with the notion that civil governors have only a limited claim on their subjects' allegiance. Citing for support the editor of Madison's papers, Vetterli and Bryner assert that "Madison's chief interest in life was to prove that America had been chosen by Providence for an experiment to test man's capacity for self-government."¹²¹

The American constitutional tradition shows a marked and not always liberal strain of Christian influence. The colonial charter of

Rhode Island which remained its fundamental law until well into the nineteenth century provided for public support of the Christian religion. The South Carolina Constitution of 1778 declared the "Christian Protestant religion" to be the established religion of the State. In 1776 the constitutions of Massachusetts, New Hampshire, North Carolina, Georgia, and Pennsylvania all contained religious tests for office. Until 1792 Delaware's constitution required an oath of office in which state officials swore to "profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore" and to acknowledge the "Old and New Testaments to be given by divine inspiration." Even state constitutional grants of religious freedom, such as that of Maryland, often restricted such liberties to Christians.¹²²

Religious thinking came to American readers through a variety of sources. The English Commonwealth tradition was so linked to the rise of the Puritan cause and the rights of dissenters that readers of Milton or Sidney could not avoid the religious implications of their writings. The common-law jurists frequently linked the ancient constitution to God's law. Although Enlightenment thinkers like Voltaire and Hume were notorious for their skepticism, others like Locke pronounced strong religious beliefs alongside their calls for toleration. Even pagans like Cicero considered "God" the author of the Natural Law to which all persons are subject.

Perhaps the most important strand of the religious tradition to touch the creation of the American Constitution, however, is that which Bailyn identifies as Puritan covenant theology. This tradition,

emanating from the earliest American Puritans of New England, "had been consolidated and amplified by a succession of writers in the course of the seventeenth century, channeled into the main stream of eighteenth-century political and social thinking by a generation of enlightened preachers and softened in its denominational rigor by many hands until it could be received, with minor variations, by almost the entire spectrum of American Protestantism."¹²³

Bailyn points out how, on the one hand, this was a rather narrow tradition in the sense that its origins were local and parochial. On the other hand, this tradition was the broadest of all in the sense that it gave nothing short of a cosmic dimension to the Revolution. According to American Puritan belief, the early settlers had been brought to the promised New World by the hand of God in the same way that Moses and the Children of Israel had been brought through the wilderness to the promised land Canaan. The "promise" of the promised land was sometimes vague, but nevertheless an essential part of the covenant by which they were bound. With the coming of the Revolution, the promise became the reassurance of the dawning of a new day of political liberty, to begin in America and spread from there throughout the world. The idea that "America had been set apart by God, and that this people had been chosen to create a new and higher community for the example and edification of mankind . . . had become so established by the Revolution that it was in fact part of the existing political or civil orthodoxy."¹²⁴

This republican eschatology likewise embraced constitution-making. It was common among American clergy of the time to cite the Constitution

as having come about under the direction of Providence. Hard-headed, practical men though they may have been, important delegates nonetheless felt the eyes of the world were on them and that their opportunity in Philadelphia to create a republic would have far-reaching consequences for all mankind. Madison, for example, told his fellow delegates that "it was more than probable we were now digesting a plan which in its operation would decide for ever the fate of Republican Government." Hamilton concurred, observing that, "if we did not give to that form [of republican government] due stability and wisdom, it would be disgraced and lost among ourselves, disgraced and lost to mankind for ever." Franklin likewise, in his bid to get the delegates to open sessions with prayer, stated his fear that their failure in convention would cause all mankind to "despair of establishing Governments by Human wisdom and leave it to chance, war and conquest." The Federalist similarly contains numerous references by all three authors to God's role and the hand of Providence in the founding of America.¹²⁵

McDonald categorizes the strains of American republicanism imbibed by the founders into two rough divisions, one of which included those who reduced their republican principles to an ideological system. The ideological branch was further divided into the "puritan" and the "agrarian," the differences between which he elaborates. According to McDonald the distinguishing feature of puritan republicanism was that it proposed a "moral solution to the problem of the mortality of republics." John Adams, for whom the supports of "'pure Religion'" or "'Austere Morals'" are the key to the success of a republic, was exemplary of this view.¹²⁶

But the systems of government that grew out of the notion of the covenant contributed more than ideology to American constitutionalism.

Say Vetterli and Bryner,

The Puritan ideal of covenant proved to be a catalyst to the growth of the idea of the rule of law. . . . It was not just an agreement; it was a legal and binding contract. . . . The experience and practice with the covenant and direct representation in both church congregations and town governments naturally contributed to the eventual republican system of elected representatives who serve at the behest of their constituents. And no doubt, the practice of colonial charters and church covenants led to the expectation that constitutions would be written documents, outlining the purposes and powers of government as well as restrictions of particular powers, including the inference that acts of government that violated the terms of the constitution were null and void.¹²⁷

Daniel Boorstin's characterization of American Puritan community life, though somewhat overstated, nevertheless makes the valid point that "constitutional" issues were present from the beginning. He cites three dominant concerns among the earliest New Englanders: 1) "how to select leaders and representatives;" 2) "the proper limits of political power;" and 3) how to create a "feasible federal organization."¹²⁸

Protestant Christianity, thus, and particularly Puritan covenant theology, added impetus and legitimacy to the framers' efforts to establish the United States. If they did not always specifically acknowledge this tradition, it is in part because it was so much taken for granted. Religion was a vital component in the intellectual development of American republican constitutionalism.

SUMMARY

Although the Constitution that resulted from the Federal Convention of 1787 was not a mere child of philosophy, ideas were of great importance in the creation of the American system of government.

In spite of their importance, particular writers and intellectual traditions were not always acknowledged in the Convention, because delegates had absorbed them as part of their cultural baggage almost to the point of subliminality. Furthermore, as John Adams showed well enough by his Defence of the Constitutions of Government of the United States of America, eighteenth-century standards of political rhetoric did not demand that writers or speakers credit their sources to the extent that one might expect today.

The strands of thought that contributed to the creation of the republic were numerous. Bailyn isolated five that underlay American revolutionary ideology: classical antiquity, English common law, the Enlightenment, the Commonwealth or radical whig tradition and Puritan covenant theology. The intellectual sources of the Revolution and the Constitution were substantially the same--if there was any great change between the 1760s and the 1780s it would have been in the emphasis given particular sources. For convenience, therefore, Bailyn's categories have been borrowed and applied in this study to the development of Constitutional thought.

Bailyn's five traditions are by no means exclusive or all-inclusive, however. As Jack Greene says (referring to his own but equally true of Bailyn's categories), "these several strands of thought were so tangled and interdependent that the quest to determine intellectual primacy among them over the entire Revolutionary period is a waste of intellectual effort."¹²⁹ It is further complicated, he points out, by the fact that the founders did not organize knowledge according to the same classifications that we do today. To Bailyn's

categories, therefore, must be added historical knowledge, which somewhat embraces all the others, but is not strictly a tradition of formalized thinking. However, for the founders history was of sufficient importance in providing them with "experience" from which to draw that it must be included in an analysis of the constitution's intellectual roots, to which end the following chapter is devoted.

NOTES

1. James Madison, The Debates in the Federal Convention of 1787, edited by Gaillard Hunt and James Brown Scott (Buffalo, N.Y.: Prometheus Books, 1987), 23.
2. Forrest McDonald, Novus Ordo Seclorum: The Intellectual Origins of the Constitution (Lawrence, Kansas: University Press of Kansas, 1985), ix; David G. Smith, The Convention and the Constitution: The Political Ideas of the Founding Fathers (New York: St. Martin's Press, 1965), 2.
3. McDonald, x; Gordon S. Wood, "The Intellectual Origins of the American Constitution," National Forum 64, no. 4 (Fall 1984): 5.
4. Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge, Mass.: Belknap Press, Harvard University Press, 1967)
5. See, for example, Richard Vetterli and Gary Bryner who summarize Bailyn's work and adopt his sources but emphasize more the Judaeo-Christian background to American politics or Garry Wills who emphasizes the impact of the Scottish Enlightenment on American fundamentals of government. Vetterli and Bryner, In Search of the Republic: Public Virtue and the Roots of American Government (Totowa, N.J.: Rowman & Littlefield, 1987); Garry Wills, Explaining America: The Federalist (Garden City, N.Y.: Doubleday & Co., 1981).
6. George Mace, Locke, Hobbes, and the Federalist Papers: An Essay on the Genesis of the American Political Heritage (Carbondale, Ill.: Southern Illinois University Press, 1979), 10; Gordon Wood, The Creation of the American Republic, 1776-1787 (New York: W.W. Norton & Co., 1969).
7. Mace, 11-13; Clinton Rossiter, 1787: The Grand Convention (New York: W.W. Norton & Co., 1987), 261, 298; see also pp. 57, 262, 322.
8. Vetterli, 13, citing Charles Hyneman and Donald S. Lutz, American Political Writing During the Founding Era (Indianapolis: Liberty Press, 1983), 192.
9. Garry Wills, Inventing America: Jefferson's Declaration of Independence (New York: Vintage Books, a Division of Random House, 1978) xix, 352. The entire Chapter Twenty-seven is a development of this idea.
10. Benjamin Rush to Richard Price, May 25, 1786, Letters of Benjamin Rush, vol. 1, 1761-1792, ed. L.H. Butterfield (Princeton, N.J.: Princeton University Press, 1951), 388.

11. Bailyn is one who puts forth this view, to some extent supported by Meyer Reinhold; see Ideological Origins, 24; Reinhold, Classica Americana: The Greek and Roman Heritage in the United States (Detroit, Mich.: Wayne State University Press, 1984) 95.

12. Reinhold, 94.

13. Richard M. Gummere, The American Colonial Mind and the Classical Tradition (Cambridge, Mass.: Harvard University Press, 1963), x.

14. Gilbert Chinard, "Polybius and the American Constitution," Journal of the History of Ideas 1 (1940): 38; Reinhold, 102.

15. Reinhold, 96; Wood, Creation, 50.

16. Gummere, 178; Reinhold, 102; McDonald, 67. Bailyn adds as important to erudite colonials Homer, Sophocles, Euripides, Herodotus, Lucian, Epictetus, Horace, Vergil, Lucan Seneca, Nepos, Ovid, Lucretius, Cato, Pliny, Juvenal, Curtius, Marcus Aurelius, Petronius, Suetonius, Caesar, Ulpian, Gaius, and Justinian; Bailyn, 24, citing Charles F. Mullett, "Classical Influences on the American Revolution," Classical Journal 35 (1939-40), 93, 94. The importance of Plato is debatable, see Gummere and discussion below.

17. Gummere, 179; Stanley Katz, "Origins of American Constitutional Thought," Perspectives in American History 3 (1969), 475; Reinhold, 101, 102; Jefferson and Adams had problems taking Plato seriously as well; see Bailyn, 24-25.

18. Aristotle Politics 1265b.

19. Ibid. 1296b.

20. Gummere, 177.

21. Ibid.; John Boardman, Jasper Griffin, Oswyn Murray, eds., The Oxford History of the Classical World (Oxford: Oxford University Press, 1986), 640.

22. Chinard, 42-44.

23. Gummere, 177.

24. Gummere, 178; quotation from Reinhold, 101.

25. D.P. Shackleton Bailey, ed., introduction to Cicero: Selected Letters (New York: Penguin Books, 1982), 9-15.

26. Robert N. Wilkin, Eternal Lawyer: A Legal Biography of Cicero (New York: Macmillan & Co., 1947), 215, 218; John Dickinson, Death of a

Republic: Politics and Political Thought at Rome 59-44 B.C. (New York: Macmillan Co., 1963), 260.

27. Wilkin, 215-217, quotation on 217; see also Dickinson, 267-273; Gummere, 176.

28. Gummere, 127; Wilkin, 215, 217; Dickinson, 263-265, 288-290.

29. Wilkin, 217.

30. Gummere, 190.

31. See J.G.A. Pocock, The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century (Cambridge: Cambridge University Press, 1987).

32. Edmund Burke, "On Conciliation with the Colonies," Burke's Speeches and Letters on American Affairs, edited by Ernest Rhys (London: Everyman's Library, J.M. Dent & Sons, 1908), 94.

33. Bailyn, 31.

34. Jack P. Greene, The Intellectual Heritage of the Constitutional Era: The Delegates' Library (Philadelphia: The Library Co. of Philadelphia, 1986), 20; Daniel J. Boorstin, The Americans: The Colonial Experience (New York: Vintage Books, a division of Random House, 1958), 201.

35. Stephen White, Sir Edward Coke and "The Grievances of the Commonwealth, 1621-1628 (Chapel Hill, N.C.: University of North Carolina Press, 1979), 3, 11; J.P. Kenyon, ed., The Stuart Constitution, 1603-1688: Documents and Commentary (Cambridge: Cambridge University Press, 1986), 77.

36. Greene, 19; Bailyn, 30, 31; Thomas Jefferson, letter to John Page, Dec. 25, 1762, in Jefferson Himself: The Personal Narrative of a Many-Sided American, edited by Bernard Mayo (Charlottesville: The University Press of Virginia, 1942), 10; Boorstin, 203; Jefferson, letter to H.G. Spafford (1814), in Thomas Jefferson on Democracy, edited by Saul K. Padover (New York: A Mentor Book, New American Library, 1939), 84, 85.

37. Kenyon, 74-76, 88; Pocock, 31, 35, 37-38; see also Roscoe Pound Interpretations of Legal History (New York: MacMillan Co., 1923), 8-9. Pound says, "Coke's Second Institute is a history of public law in which he seeks to make out the case of the common-law courts against the Stuart kings by setting forth the immemorial common-law rights of Englishmen, possessed by their forefathers from the beginning and declared by Magna Carta, by a long succession of statutes, and by a long and continuous succession of judicial decisions."

38. Greene, 20; J.P. Kenyon et al., A Dictionary of British History (London: Pan Books, 1981), s.v. "Coke, Sir Edward", 85; "Petition of Right," 280; quotation is from White, 275-76. White contains a full account of the coming forth of the Petition of Right.

39. Greene, 21. However, Greene points out that Hume argued against the ancient constitution and was widely read by Americans, but on that issue seems to have been ignored.

40. Pound, 52; Boorstin, 200, 203.

41. Greene, 22.

42. Ibid.

43. Alan Valentine, The British Establishment 1760-1784 (Norman, Oklahoma: University of Oklahoma Press, 1970), 84; David A. Lockmiller, Sir William Blackstone (Chapel Hill, N.C.: University of N.C. Press, 1938). These sources suggest that following publication of the Commentaries, Blackstone's public life remained generally dignified, but little worthy of renown. In 1761 he was granted the status of king's counsel; in 1763 he became the Queen's solicitor general and a bencher of the Middle Temple. Although elected to Parliament in 1761, his service in that body was of no great moment. He accepted a judgeship in the court of common pleas in 1770 and in that capacity presided until his death ten years later.

44. McDonald, 7.

45. McDonald, 212, 228; see also selection from the Commentaries in The Eighteenth-Century Constitution 1688-1815: Documents and Commentary, edited by E. Neville Williams (Cambridge: Cambridge University Press, 1960), 74.

46. McDonald, 12-14, 26, 28, 40, 42, 248.

47. McDonald, 234; Lockmiller, 174.

48. Bailyn, The Origins of American Politics (New York: Alfred A. Knopf, 1968), 21-23.

49. J.G.A. Pocock, The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition (Princeton: Princeton University Press, 1975), 189-190; Wood, Creation, 50, 206; Bailyn, Ideological Origins, 200; Mace, 10, Chap. 3; McDonald, 70, 164n; Caroline Robbins, The Eighteenth-Century Commonwealthman: Studies in the Transmission, Development and Circumstance of English Liberal Thought from the Restoration of Charles II until the War with the Thirteen Colonies (Cambridge, Mass.: Harvard University Press, 1959), 131, 251, 360.

50. Other important writers in this broad tradition include Marchamont Nedham, Edmund Ludlow, Andrew Marvell, Benjamin Hoadly, Robert Molesworth, John Toland, Walter Moyle, Paul de Rapin-Thoyras, William Guthrie, Jonathan Swift and Alexander Pope, though many of these were not necessarily "republicans"; see Pocock, Machiavellian Moment, 507; Robbins, 386; Greene 32-33; Bailyn, Ideological Origins, 34-45.

51. Robbins, 41-45; Dictionary of British History, s.v. "Sidney, Algernon," 322.

52. Robbins, 46.

53. Robbins, Commonwealth, 44-46; Two English Republican Tracts: Plato Redivivus by Henry Neville; An Essay Upon the Constitution of the Roman Government by Walter Moyle (Cambridge: Cambridge University Press, 1969), 42; see examples in Algernon Sidney, Discourses Concerning Government (Philadelphia: C.P. Wayne publisher, 1805), 2:52, 77, 197, 201, 230, 303, 361-375.

54. Robbins, Two Tracts, 40; Dictionary of National Biography, s.v. "James Harrington" (Oxford: Oxford University Press, 1973).

55. McDonald, 74; Pocock, Machiavellian Moment, 389-395.

56. Pocock, ed., The Political Works of James Harrington (Cambridge: Cambridge University Press, 1977), 150-151.

57. Robbins, Two Tracts, 7-13; Pocock, Machiavellian Moment, 417; Robbins, Commonwealthman, 32-36.

58. Robbins, Commonwealthman, 34; Edmund S. Morgan, Inventing the People: The Rise of Popular Sovereignty in England and America (New York: W.W. Norton & Co., 1988), 104.

59. Robbins, Commonwealthman, 37-39; Pocock, Machiavellian Moment, 417.

60. Robbins, Commonwealthman, 35.

61. Bailyn, Ideological Origins, 34.

62. Frank Kermode et al., eds., Oxford Anthology of English Literature: Major Authors Edition (New York: Oxford University Press, 1975), 1:761; David M. Miller, John Milton: Poetry (Boston: Twayne Publishers, 1978) 20-23; Robbins, Commonwealthman, 51; G.B. Harrison et al., eds., Major British Writers: . . . Milton (New York: Harcourt, Brace & World, 1954), 1:403; see also George F. Sensabaugh, That Grand Whig Milton (Stanford, Ca.: Stanford University Press, 1952).

63. Robbins, Commonwealthman, 46; Sensabaugh, Milton in Early America (Princeton, N.J.: Princeton University Press, 1964), vii-viii, 122-127.

64. Sensabaugh, Milton in America, 133, 135.

65. Robbins, Two Tracts, 58.

66. David L. Jacobson, ed., in introduction to The English Libertarian Heritage: From the Writings of John Trenchard and Thomas Gordon in the Independent Whig and Cato's Letters (Indianapolis: Bobbs-Merrill Co., 1965), xvii; Robbins, Commonwealthman, 386; see also Wood, "Intellectual Origins" who says: "It was not so much the treatises of philosophers like John Locke as it was the essays of coffee-house journalists like John Trenchard and Thomas Gordon that spread republican values throughout the eighteenth-century, English-speaking world," 6; Bailyn, 35; Katz, 475-76.

67. Jacobson, xx; Dictionary of National Biography, s.v. "Trenchard, John," "Gordon, Thomas." Said to be "large and corpulent," Gordon is reputed to be the snoring "Silenus" of Pope's Dunciad.

68. Bailyn, Ideological Origins, 35-36; Jacobson, xxv.

69. Trenchard and Gordon in Cato's Letters, nos. 59, 106 in Jacobson; Jacobson, xxxviii-xliv; see also Cato's Letters, nos. 16, 18.

70. For example, see Cato's Letters, nos. 25, 38.

71. Ibid., no. 33, p. 80.

72. Ibid., no. 61, p. 126.

73. Ibid., no. 38, p. 97.

74. McDonald, 60.

75. Bailyn, Ideological Origins, 39.

76. Quotations found in both Simon Varey, Henry St. John, Viscount Bolingbroke (Boston: Twayne Publishers, 1984), 14, and Jeffrey P. Hart, Viscount Bolingbroke: Tory Humanist (Toronto: University of Toronto Press, 1965), vii-viii.

77. Hart, vii-viii.

78. Varey, 1-14.

79. McDonald, 70.

80. McDonald, 7, 74, 76n, 80, 93-94, 233.
81. Varey, 99-101; McDonald, 199-200.
82. Bailyn, Ideological Origins, 34.
83. Arthur M. Wilson, "The Enlightenment Came First to England," England's Rise to Greatness, 1660-1763, edited by Stephen B. Baxter (Berkeley, Ca.: University of California Press, 1983), 1-28. Dr. Wilson includes in this article a discussion of the English etymology of the term "Enlightenment," see 21-22; see also Greene, 40.
84. Wills, Inventing America, 356-357.
85. Greene, 18, 42; Wood, Creation, 300, 301, 303; Bailyn, Ideological Origins, 27.
86. Robbins, Commonwealthman, 64-65.
87. Peter Laslett, ed. in introduction to Two Treatises of Government by John Locke (New York: Mentor Book, New American Library, 1960), 35.
88. Laslett, 31.
89. Laslett, 36-42, 45; Robbins, 58-60.
90. See Carl Becker, The Declaration of Independence: A Study in the History of Political Ideas (New York: Alfred A. Knopf, 1960) and Louis Hartz, The Liberal Tradition in America: An Interpretation of American Political Thought since the Revolution (New York: Harcourt, Brace, 1955).
91. Wills, Inventing America, 168-74; Mace, 9; Vetterli, 13, citing Hyneman and Lutz, American Political Writing, 196; see also Institute of Government Research, The Non-Lockean Roots of American Democratic Thought (Tucson, Az.: University of Ariz Press, 1977).
92. McDonald, viii.
93. McDonald, 7, 60; Wood, Creation, 14.
94. McDonald, 61-66; Wood, Creation, 601-602.
95. Madison, Debates, 77.
96. Ibid., 130, 175.
97. McDonald, 53.
98. Wood, Creation, 151, 370-71.

99. Wood, Intellectual Origins, 6

100. Paul Merrill Spurlin, Montesquieu in America, 1760-1801 (New York: Octagon Books, 1969), xxii-xxvii, 3-17.

101. David W. Carrithers, ed., in introduction to The Spirit of Laws: A Compendium of the First English Edition by Charles Louis de Secondat, Baron de Montesquieu (Berkeley, Ca.: University of California Press, 1977), xiii; McDonald, 80; see also Spurlin, xxii-xxvii, 3-17.

102. Benjamin F. Wright, Jr., "The Origins of the Separation of Powers in America," Economica 13 (May 1933), 170; Katz, 475-76; Spurlin, The French Enlightenment in America: Essays on the Times of the Founding Fathers (Athens, Ga.: University of Georgia Press, 1984), 93; McDonald, 80; Carrithers, 77. Wright is one of the strongest critics of the assertion that Montesquieu is responsible for the transmission of the separation of powers idea to the American Constitution. He agrees that the Frenchman helped popularize the principle, but suggests its real inspiration came from the practice of the colonial governments. As the discussion in the following pages shows, there were other influences on the adoption of the idea but Montesquieu remains paramount.

103. Spurlin, French Enlightenment, 92-93.

104. McDonald, 80; Spurlin, French Enlightenment, 95, 97-98; Carrithers, 76.

105. Montesquieu, The Spirit of Laws, Book XI, Chap 6., p. 202.

106. Spurlin, French Enlightenment, 89.

107. See Spurlin, Montesquieu in America, 184, 185-87, 241; Spurlin, French Enlightenment, 98.

108. Spurlin, French Enlightenment, 97-98.

109. Roy Branson, for one, has noted "the surprisingly neglected relevance of the social and political ideas of the Scottish Enlightenment to American Constitutional thought." He particularly writes of the tremendous degree to which Madison was influenced, primarily through Witherspoon, by the Scots thinkers of the eighteenth century. Douglass Adair and Garry Wills have been among the strongest advocates of the influence of the Scottish Enlightenment in America; Branson, "James Madison and the Scottish Enlightenment," Journal of the History of Ideas 40 (April-June 1979), 235; see Trevor Colbourn, Fame and the Founding Fathers: Essays by Douglass Adair (New York: W.W. Norton & Company, 1974); and Wills, Inventing America and Explaining America.

110. Greene, 45-47.

111. Greene, 48.

112. See British Institute of the United States and the Mentor Group, The Influence of the Scottish Enlightenment on the U.S. Constitution (Washington, D.C.: The British Institute of the United States, 1985). One participant went so far as to suggest that Wills' preference for Hume had implications for twentieth-century political ideology tantamount to choosing communism (allegedly Hume) over capitalism (allegedly Locke) as explanations for America's origins, 10.

113. Antony Flew, David Hume: Philosopher of Moral Science (Oxford: Basil Blackwell, 1986), 6-12; A.P. Cavendish, David Hume (New York: Dover Publications, 1968), 9-10.

114. Flew, 9-10; Cavendish, 11-13.

115. Flew, 10.

116. Ibid.; Cavendish, 9-14.

117. Douglass Adair in Colbourn, 95-97.

118. Branson, 238-240.

119. Adair, 98.

120. Ibid. 99; Hume quoted by Adair, 100; see also Branson, 240.

121. Vetterli, 59, 62-66, 106; Ralph Ketcham, James Madison: A Biography (New York: MacMillan Co., 1971), 50; quotation is from Vetterli, 66, citing Robert A. Rutland in Power, Morals, and the Founding Fathers, edited by Adrienne Koch (Ithaca, NY: Cornell University Press, 1961), 105.

122. Paul Eidelberg, The Philosophy of the American Constitution: A Reinterpretation of the Intentions of the Founding Fathers (New York: The Free Press, 1968), 264-271.

123. Bailyn, Ideological Origins, 32.

124. Ibid.; Vetterli, 48-50.

125. Madison, Debates, 168, 169, 181, 182; Vetterli, 67-69.

126. McDonald, 71.

127. Vetterli, 104-105.

128. Eorstin, 30-31.

129. Greene, 10.

CHAPTER II

THE IDEAS, PART II: THE USE OF HISTORY IN THE CONVENTION

"If ancient republics have been found to flourish for a moment only and then vanish for ever, it only proves that they were badly constituted."

--John Dickinson from the floor of the Federal Convention, June 2, 1787.

No eighteenth-century American was well-read who was not well-read in history. Although not always considered the most demanding of academic disciplines and seldom a separate subject in the pre-Revolutionary college curriculum, every minister, lawyer and public servant understood a knowledge of history to be of the utmost value and usefulness. "To the eighteenth-century colonist, the study of history was a prestigious and a practical pursuit," says Trevor Colbourn. Agrees Meyer Reinhold, the American of the 1700s "studied it intensively, confident of its utility for their own lives." He states, "No American of the time would have thought of asking, 'What is the use of history?'" Gordon Wood adds that for the creators of the American republic, "history was the most obvious source of information, for they knew that they must 'judge of the future' by the past."¹

The political writings of John Adams, for example, are steeped in historical references and allusions. His A Defence of the Constitutions of the United States of America is saturated in the history of the Greek city-states and the Roman and later European "republics." According to Douglass Adair, "Adams assumed without question that history did offer lessons and precepts which statesmen could use in solving immediate problems." Specifically, he "urged the study of classical Greek republics as the particular history especially relevant, most full of useful lessons and precepts for Americans in 1787."²

The delegates to the Constitutional Convention were not only not exceptional among eighteenth-century Americans in their study and application of history to the work at hand, but they represent one of the best examples of how eighteenth-century Americans used history to make history. "Did the fifty-five men gathered to create a more perfect union consciously turn to past history for lessons and precepts that were generalized into theories about the correct organization of the new government?" asks Adair. "Did lessons from the antique past, applied to their present situation, concretely affect their actions at Philadelphia?" Says Adair, despite the tendency of twentieth-century historians to ignore or deny the fact, "the evidence is overwhelming that they did."³

No better evidence exists to support this contention than the records of the debates themselves, a review of which helps answer further questions: How often was history actually cited in the debates? Which delegates made the greatest use of historical allusions? What historical periods and places were most often cited and to what end? To

what extent did historical allusions appear to constitute mere rhetorical devices as opposed to being central to the debate?

Historical "experience" came to the delegates in two forms: the history they learned from books and the personal history which they had lived, especially most recently in the Revolution. Although the focus here is on history outside of the delegates' personal experience as it was transmitted through the written and spoken word, this is not to suggest that Shays' Rebellion and earlier arguments over western lands or the location of the capital were not of great importance for the creation of the Constitution. But it is to stress the role of history from outside the delegates' time and place as the less obvious source of intellectual props and materials for the debates. In other words, the emphasis is on the delegates' citing of historical arguments and incidents more likely to have been garnered from the formal education process or serious study.⁴

A review of the most comprehensive records of the Convention, those kept by James Madison, reveals that delegates to the Convention collectively drew on history to support their contentions at least seventy-three times in sixty-one different speeches. In other words, in longer speeches a delegate may have resorted to history more than once to prove different points. When one considers that some arguments drew on more than one historical illustration to support the same point, the number of references increases to ninety-five.⁵

Because the Convention met on eighty-eight different days, it would appear initially then that the debates included historical references on an average of little more than once a day. However, the

picture changes when one looks at the particular issues that tended to flush out historical arguments. In the forty-three sessions between the beginning of the Convention and the adoption of the "Great Compromise" on senate representation, or fewer than half the total sessions, the delegates made sixty-five of the ninety-five historical references recorded by Madison. In the twenty-eight sessions that followed, from July 17 until August 27, which included much debate on the executive and on slavery issues, there occurred twenty-seven historical allusions. In the last seventeen sessions of the debate, however, when the delegates were fine tuning, they made only three historical references, as recorded by Madison.⁶

Not all of the debates lent themselves to the use of history. Unquestionably historical references appeared more frequently in discussions of broad policy such as on the status of the states under the new government, the extent of executive power, or whether constitutionally the Convention should favor or disfavor slavery. Details of the plan were more often decided more practically--by a resort to "common sense," political expediency or personal "historical" experience. But on the broader issues the delegates used historical arguments in at least sixteen instances to debate the powers and limitations of the power of the proposed executive. On at least twelve occasions history served to argue the pros and cons of strengthening the central government in general and whether to retain, modify or abolish the states as legal entities. Ten of the delegates' historical arguments dealt specifically with equal versus proportional representation in one or both houses of Congress. Other historical

references served as guidance on the qualifications and powers of legislators and judges. Three times history was called on to testify for or against the slave trade.

Not all of the delegates, however, found it necessary to call Clio to the stand in support of their arguments. Madison records only fifteen of the fifty-five delegates as using history to shore up their arguments and only ten as doing so on more than one occasion. (See Table 2-1.) With thirteen historical arguments, the Virginian Madison himself leads the list of those seeking historical precedents for the task at hand. He is followed by three Pennsylvanians: James Wilson and Benjamin Franklin evoked history nine times each; Gouverneur Morris eight times. Delaware's John Dickinson cited history seven times. Alexander Hamilton and Charles Pinckney, each in his turn, made six historically-based arguments. Others citing history from the floor included Pierce Butler, Oliver Ellsworth, Rufus King, Luther Martin, George Mason, William Pierce and Roger Sherman.

A bare recital of names and numbers can be misleading, however, and the figures change somewhat if one counts not solely the times a delegate makes a historically-based argument, but his number of different references to historical events or, alternatively, if one counts merely the number of speeches containing historical allusions. In each analysis Madison and Wilson still come out on top, however, reinforcing the point that some delegates took their history more seriously than others.

Madison, Wilson, Hamilton, Morris, Dickinson and Pinckney especially tended to expound at length on their historical offerings and

Table 2-1
HISTORICAL REFERENCES DURING THE CONSTITUTIONAL CONVENTION (BY DELEGATE)

DELEGATE	NUMBER OF REFERENCES	NATURE OF REFERENCE	PAGE*
Bedford	1	Classical.	199
Butler	4	European. Classical. British. Classical. British. European.	49 53 61 530
Dickinson	7	General republican. General republican. Classical. British. British. General history. European. Classical.	47 47 72 144 392 407 445
Ellsworth	2	European. General republican.	189 193
Franklin	9	Biblical. General history. American (Quakers). European. British. General history. General republican. British. European.	44 44 45 55 85 93 181 290 292
Hamilton	6	Classical. European. European. Classical. Classical. Classical.	113 114 114 118 129 169
King	1	British.	200
Madison	13	Classical. Classical. Classical. British. European. Classical. European. Classical. European. General republican.	65 71 122-23 124-25 125 141

DELEGATE	NUMBER OF REFERENCES	NATURE OF REFERENCE	PAGE
Madison (cont.)		Classical. European.	178
		Classical. European.	179
		Classical.	186
		Classical. European.	194
		European.	319
		British.	375
Martin, L.	1	British. General history.	175
Mason	4	General history.	54
		British.	327
		American.	432
		Classical.	443
Morris, G.	7	British.	218
		Classical. European.	222
		British. European.	269
		General history.	282
		British.	293
		Classical. Biblical.	321
		Classical. British.	407
Pierce	1	British.	95
Pinckney, Ch.	8	Classical. British. European.	156
		Classical. British. European.	157
		Classical. European.	159
		Classical.	367
		Classical. European.	444
		Classical.	504
Sherman	1	British.	464
Wilson	9	General republican.	67
		Classical.	109
		Classical. British.	129
		Classical. European.	138
		European.	163
		British.	219
		British.	390
		British.	408
		British.	473

*Page references in all tables are to James Madison, Debates in the Federal Convention of 1787, eds. Gaillard Hunt and James Brown Scott (Buffalo, N.Y.: Prometheus Books, 1987).

to cite a number of different examples to support the same point. For instance, according to Madison, to illustrate his fear that the states would likely encroach upon national prerogatives, he "reviewed the Amphycitionic and Achaean confederacies among the antients, and the Helvetic, Germanic and Belgic among the moderns, tracing their analogy to the U. States." Madison's references reflect his serious historical study: Ten of them include analysis of the classical republics and he never once evokes "history" in general. Franklin, on the other hand, tended to speak more rhetorically and more generally. "As all history informs us," he says, "there has been in every State and Kingdom a constant kind of warfare between the governing and the governed." Franklin cites no classical examples, refers to general history three times, and is otherwise anomalous in his references to the history of American Quakers, the Bible, and early Christianity (e.g. "the establishment of the papal system").⁷

But if Franklin's historical allusions are somewhat out of the mainstream of those of the other history-citing delegates, what in fact make up the more typical historical references in the Convention? In general, the delegates refer to three main geographical and chronological areas: Greek and Roman classical history; the history of Great Britain; and the history of Europe, particularly of the early modern European republics. (See Table 2-2.) Although not by far, the thirty-one classical references constitute the greatest number. British and European examples follow, with twenty-four of each. In addition, on six occasions the delegates refer to the history of republics, without specifying which republics, and on six other occasions they merely

Table 2-2
HISTORICAL REFERENCES DURING THE CONVENTION (BY NATURE OF REFERENCE)

	REFERENCE	PAGE	DELEGATE
(31)	Classical.	199	Bedford
	Classical.	53	Butler
	Classical.	61	Butler
	Classical.	72	Dickinson
	Classical.	445	Dickinson
	Classical.	113	Hamilton
	Classical.	118	Hamilton
	Classical.	129	Hamilton
	Classical.	169	Hamilton
	Classical.	65	Madison
	Classical.	71	Madison
	Classical.	122	Madison
	Classical.	124	Madison
	Classical.	125	Madison
	Classical.	178	Madison
	Classical.	179	Madison
	Classical.	179	Madison
	Classical.	186	Madison
	Classical.	194	Madison
	Classical.	443	Mason
	Classical.	222	Morris, G.
	Classical.	321	Morris, G.
	Classical.	407	Morris, G.
	Classical.	157	Pinckney, Charles
	Classical.	159	Pinckney, Charles
	Classical.	367	Pinckney, Charles
	Classical.	444	Pinckney, Charles
	Classical.	504	Pinckney, Charles
	Classical.	109	Wilson
	Classical.	129	Wilson
	Classical.	138	Wilson
(24)	British.	53	Butler
	British.	530	Butler
	British.	144	Dickinson
	British.	392	Dickinson
	British.	85	Franklin
	British.	290	Franklin
	British.	200	King
	British.	122	Madison
	British.	375	Madison
	British.	175	Martin, L.
	British.	327	Mason

REFERENCE	PAGE	DELEGATE
British.	218	Morris, G.
British.	269	Morris, G.
British.	293	Morris, G.
British.	407	Morris, G.
British.	95	Pierce
British.	156	Pinckney, Charles
British.	157	Pinckney, Charles
British.	464	Sherman
British.	129	Wilson
British.	219	Wilson
British.	390	Wilson
British.	408	Wilson
British.	473	Wilson
(22) European.	49	Butler
European.	530	Butler
European.	407	Dickinson
European.	189	Ellsworth
European.	55	Franklin
European.	292	Franklin
European.	113	Hamilton
European.	114	Hamilton
European.	122	Madison
European.	124	Madison
European.	125	Madison
European.	178	Madison
European.	179	Madison
European.	194	Madison
European.	319	Madison
European.	222	Morris, G.
European.	269	Morris, G.
European.	293	Morris, G.
European.	156	Pinckney, Charles
European.	157	Pinckney, Charles
European.	159	Pinckney, Charles
European.	444	Pinckney, Charles
European.	138	Wilson
European.	163	Wilson
(6) General history.	392	Dickinson
General history.	44	Franklin
General history.	93	Franklin
General history.	175	Martin, L.
General history.	54	Mason
General history.	282	Morris, G.
(6) General republican.	47	Dickinson
General republican.	47	Dickinson

REFERENCE	PAGE	DELEGATE
General republican.	193	Ellsworth
General republican.	181	Franklin
General republican.	141	Madison
General republican.	67	Wilson
(2) American (Quakers).	45	Franklin
American.	432	Mason
(2) Biblical.	44	Franklin
Biblical.	321	Morris, G.

invoke history in general as verifying their particular argument. In only two instances do delegates refer to incidents in America's past that would have necessarily been outside their firsthand knowledge--once in Franklin's reference to more than one-hundred years of Quaker history (though perhaps barely outside his personal knowledge), and once in Mason's reference to Bacon's rebellion. In two other instances delegates make biblical allusions that might be viewed as historical in their nature.⁸

Further breakdown of these classifications of history cited by the delegates reveals Madison as making the most classical citations, followed by Charles Pinckney, Hamilton, Wilson, Gouverneur Morris, Dickinson, and Butler. Wilson makes the most references to British history but Madison again emerges as frontrunner in allusions to European history, especially to the early-modern republics. Twice Dickinson makes reference to the history of republics without specifying any one in particular, as do Ellsworth, Wilson, Madison and Franklin on one occasion each. Franklin, Dickinson, Luther Martin, Mason and Morris also make references to history in general. The biblical historical references, made almost in passing, are by Franklin and Morris.⁹

The classical allusions refer fifteen times to Greece, eleven times to Rome, five times to both, and a handful of times to the related histories of Carthage and Persia. In particular, the most common Greek references are to the Amphyctionic and Achaean "confederacies," which Wilson, Hamilton and, especially Madison each milk to the furtherance of their cause. This is not surprising, for these and other confederacies noted by the delegates, says Richard Gummere, "during the decade before

the American Revolution . . . had been hunted out and, for the most part, praised as samples of republican polity."¹⁰

With only one exception the British historical references come from the seventeenth and early eighteenth centuries. The English Civil War and Interregnum periods and the reigns of the later Stuarts provide most of the examples, including references to the trial and execution of Charles I, the Act of Union between England and Scotland, and a number of references to particular historical aspects of the British constitution (amid a good many more general, non-historical references to it). The most common European historical examples are to the Dutch "republic," the German "empire" or "confederacy," and to Switzerland and Poland as republics.

It is impossible in one chapter of this work to point out all of the examples of how the delegates saw history as reflective of their situation. The historical references in the Convention have themselves been here extracted and included as an appendix to this study. A complete analysis of them would be book length without question. But some such analysis here is necessary, because since Madison did not always include the delegates' historical references in their entirety, it is difficult to ascertain from the Convention speeches alone just how it was that the history-citing members hoped to apply historical lessons to their task. Fortunately sources other than the debates reveal what some of the most historically-minded delegates had in mind in citing history to their colleagues. Madison and Wilson especially, the most historically-minded among them, have left other more or less contemporary writings indicative of how they saw the relevance of

history to the U.S. constitutional experiment. A review of these writings illustrates the similarity of both men's approaches to the use of history to support the foundation of a truly national republic.

In addition to the records of the debates, Madison's two works that show his thinking on history and its relevance during the formative period of the Constitution, include, first, his notes on ancient and modern confederacies that he prepared in anticipation of the Annapolis Convention. Unable to use them at Annapolis, he retained them and later made them the basis of his historical arguments in the Philadelphia Convention, in the Virginia state ratifying convention and of certain of the Federalist papers, particularly numbers 18 through 20. These latter three essays, written with some assistance from Hamilton, constitute the second work illuminative of Madison's historical thinking during the Convention.

The editors of Madison's papers point out that as early as 1784 Madison began to gather every scrap of information available which could shed light on the historical nature of republics. He appointed Jefferson his agent abroad to send him relevant works from Europe, which amounted to at least two trunk loads of books. Madison's resultant study consists of an analysis of the ancient Greek Lycian, Amphyctionic, and Achaean confederacies, and of the more recent Belgic and Helvetic confederacies, the Aulic Council, and the "Imperial Chamber." A perusal of this study and the Federalist essays reveals Madison's sense of history as he contributed to the making and ratification of the Constitution.¹¹

It was from his notes on the Lycian confederacy, for example, that Madison countered from the Convention floor Oliver Ellsworth's contention that "no instance of a Confederacy has existed in which an equality of voices has not been exercised by the members of it." Disagreeing with his colleague's attempt to effect among the delegates a compromise on legislative representation, Madison "reminded Mr. E.," so the record states, "of the Lycian confederacy, in which the component members had votes proportioned to their importance, and which Montesquieu recommends as the fittest model for that form of Government."¹²

Madison's ability in this instance to "remind" Ellsworth of the Lycians comes straight from the first paragraph of his notes Of Ancient and Modern Confederacies. Speaking of the Lycians, Madison had written:

In this confederacy the number of votes allotted to each member was proportioned to its pecuniary contributions. The Judges and Town magistrates were elected by the general authority in like proportion.

See Montesquieu who prefers this mode.¹³

As another example, following a brief historic account of the Amphycitionic confederacy, Madison outlines its "federal authority" and the vices of its constitution. Of the former he lists the league's power to "judge in the last resort all differences between the Amphycitionic cities," to employ "the whole force of Greece against such as refused to execute its decrees," to exercise the "right of admitting new members," and to declare and conduct war. Among the latter he states that too frequently "the Deputies of the strongest Cities awed and corrupted those of the weaker, and that Judgment went in favor of

the most powerful party." He then notes, "See also Plutarch's *Themistocles*."¹⁴

Compare this with his attempt in the Convention to rebut Paterson's plan, which he records as follows: "If we recur to the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole. He then reviewed the Amphyctionic and Achaean confederacies among the antients, and the Helvetic, Germanic and Belgic among the moderns, tracing their analogy to the U. States." And later he declares, "What was the condition of the weaker members of the Amphyctionic Confederacy. Plutarch (*life of Themistocles*) will inform us that it happened but too often that the strongest cities corrupted and awed the weaker, and that Judgment went in favor of the more powerful party." Again, though his notes from the debates do not always specify what he said about former confederacies, it is evident that his comments in the Convention came almost directly from this earlier work.¹⁵

Compare again these examples with Federalist, No. 18, where Madison states that the Amphyctionic Council "had a general authority to propose and resolve whatever it judged necessary for the common welfare of Greece; to declare and carry on war; to decide in the last resort all controversies between the members; to fine the agressing party; to employ the whole force of the Confederacy against the disobedient; to admit new members." And later in the same essay, in describing the deficiencies of the system, he reiterates, "It happened but too often, according to Plutarch, that the deputies of the strongest cities awed

and corrupted those of the weaker; and that judgment went in favor of the most powerful party."¹⁶

Similar examples are abundant that show that Madison's pre-Annapolis "Of Ancient and Modern Confederacies" and his post-Philadelphia Federalist writings reflect the speeches he gave in the Convention, probably in many instances constituting the text of the speeches themselves, which he condensed in his record of the debates, and are indicative of his historical thinking at the time. It is thus from these two sources rather than from his notes on the Convention that we come to better understand what Madison's colleagues in the convention actually heard him say with regard to history's importance for the creation of an American constitution. And through these other sources we see even more plainly how convinced Madison was that the "lessons of history" should be applied to the nationalization of the American state governments.

The tenor of Wilson's historical thinking, on the other hand, though also apparent, is not quite as easily ascertained as is Madison's. That his knowledge of history was superior, when compared with the average American of his time, can hardly be doubted. William Pierce wrote in his description of the Pennsylvania delegate that Wilson could "trace the causes and effects of every revolution from the earliest states of the Greek commonwealths down to the present time."¹⁷

The best source, outside of the Federal Convention, of the Scottish thinker's understanding of historical precedents to the Constitution is found in a series of lectures on law that he prepared for delivery in 1790-91 as Professor of Law at the College of

Philadelphia. "It is impossible to appreciate adequately his contribution in the field of government," says Wilson's biographer, Geoffrey Seed, "without at least some knowledge" of these lectures.¹⁸

Of these many lectures, one in particular, a historical overview of confederacies, reflects the ardent nationalism Wilson harbored in the Convention and his unity with Madison in calling on history for support. In it, Wilson, like Madison, discusses the Amphyctionic, Achaean, and Lycian councils, and the Germanic, Swiss and Belgic confederacies. "We should consider the Council of the Amphyctions as the Congress of the United States of Greece," wrote Wilson, ". . . all contests between the Grecian states and cities came under the particular cognizance of the Amphyctions. To their tribunal, an appeal also lay in all private controversies. To the same tribunal, individuals were amenable for their crimes. Their authority extended to the raising of forces and to compel the obstinate to submit to the execution of their decrees."¹⁹

Convinced that the unity provided by this council was the source of its strength, he declared that "the different states of which the union was composed, formed only one and the same republic: and this union it was, which made the Greeks so formidable afterwards to the barbarians." However, he warned, citing Federalist, No. 18, as a reference, "when Greece herself began to degenerate, her representative body was contaminated with the general corruption."²⁰

That especially this latter sentiment was not unrepresentative of Wilson's thinking in the Convention is evidenced by the frustration he voiced during the debates over the delegates' failure to find a proper

historical model for a legislature. "The number of [other confederacies] was small and the duration of some at least short," he lamented. "The Amphyctionic and Achaean were formed in the infancy of political Science; and appear by their History and fate, to have contained radical defects."²¹

Wilson's analysis of the Lycian confederacy comes directly from the same passages of Strabo that Madison quoted in his "Of Confederacies." This "republic," says Wilson, "was an association of twenty-three towns. These were arranged into three classes, in proportion to their strength." Whereas Madison had written, "'Fuere eorum urbes XXIII, distinctae in classes tres pro modo virium.'" Furthermore, also like Madison, Wilson cites Montesquieu as his authority for the superiority of the Lycian league. He writes: "'Was I to give,' says the celebrated Montesquieu, 'the model of an excellent confederate republic, I would select that of Lycia.'"²²

As illustrated thus, not only by their speeches in the Convention, but also by their extrinsic writings of the period, Madison and Wilson held similar views of the relevance of history to the making of the United States Constitution. Both men called on history frequently, using similar examples, similar sources and similar arguments, to make the case for American national republicanism. Scholars do debate the accuracy of the eighteenth-century American's historical knowledge. Meyer Reinhold, for example, states that although "the best informed about the Greek leagues," among early Americans, "were Adams, Madison, and James Wilson," they had only limited knowledge. Their frequent reference to the Amphyctionic Council for instance, says Reinhold, was a

"flawed analogy" because this council had actually been a religious organization rather than a "political or federative league."²³

But the accuracy and degree of the delegates' historical knowledge is less at issue here than the use they made of what knowledge they had. There is little question that, for the theoretical thinkers of the Constitution, the history of previous republics and federations was directly on point for the creation of their new republic. And a knowledge of history must be added to a knowledge of classical republican theory, English law, English commonwealth thinking, Enlightenment political philosophy and Protestant Christianity as the chief sources of the intellectual origins of the Constitution.

NOTES

1. H. Trevor Colbourn, The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution (Chapel Hill, N.C.: University of North Carolina Press, 1965), 4; Meyer Reinhold, Classica Americana: The Greek and Roman Heritage in the United States (Detroit, Mich.: Wayne State Univ. Press, 1984), 37, 38; Gordon Wood, The Creation of the American Republic, 1776-1787 (New York: W.W. Norton & Co., 1969), 6-7.

2. Adair, "'Experience Must Be Our Only Guide': History, Democratic Theory, and the United States Constitution," in Fame and the Founding Fathers: Essays by Douglass Adair, Trevor Colbourn, ed., (New York: W.W. Norton & Company, 1974), 108; Colbourn, The Lamp of Experience, 101-106. Several studies have been done illustrating the importance in politics of historical knowledge for eighteenth-century Americans. The most extensive study is Colbourn's Lamp, which focuses on the Revolutionary period. Reinhold and Richard Gummere are useful for analysis of the importance of classical history for American founders; see Gummere, The American Colonial Mind and the Classical Tradition (Cambridge, Mass.: Harvard University Press, 1963). Adair's article is especially relevant for the present purposes regarding history and the Constitution. In addition to these, there exists an unpublished doctoral dissertation by Raoul Naroll, U.C.L.A., 1953, entitled Clio and the Constitution: The Influence of the Study of History on the Federal Convention of 1787. Unfortunately Naroll's study was not microfilmed, is not included in Dissertation Abstracts International, and is unavailable at the Library of Congress. Naroll's approach to the topic is thus unknown. Regardless, the present chapter looks afresh at the debates and other primary sources for evidence of how the delegates made use of history in the Convention.

3. Adair, 109.

4. For the present analysis I have thus deemed "historical references" to be those references to times past, generally seen by the delegates to have had some basis in fact, and which occurred outside of the delegates' firsthand knowledge and I have generally ignored the delegates' references to the American Revolution and to the very recent past. I have also excluded some references to events in Europe that appear to be more or less contemporaneous to the Convention. On the other hand, I have included references to Europe when knowledge of such appeared to reveal from the speaker more than a casual familiarity with the incident described, such as may have been acquired through more than superficial study.

5. All of the historical references recorded by Madison during the Convention are contained in the appendix to this work. In addition to Madison's notes the records of Yates and other delegates add two or

three references not mentioned by Madison; one can only speculate whether there were historical references made by delegates but recorded by no one. For purposes of uniformity, analysis here will be based on Madison's notes alone, by far the most complete record of the Convention. James Madison, The Debates in the Federal Convention of 1787, edited by Gaillard Hunt and James Brown Scott (Buffalo, N.Y.: Prometheus Books, 1987).

6. August 27 is the last day on which a historical reference was made prior to acceptance by the Convention on August 29 of the slave trade compromise.

7. Madison, Debates, 44, 122-123.

8. Madison, Debates, 45, 432.

9. There are a few other biblical allusions throughout the Convention, though not of a historical nature.

10. Gummere, 180.

11. Robert Rutland and others, eds., preface to "Notes on Ancient and Modern Confederacies," The Papers of James Madison by James Madison, (Chicago: University of Chicago Press, 1975), 9:3. These notes are also reproduced in Madison, The Writings of James Madison, vol. 2, 1783-1787, Gaillard Hunt, ed. (New York: G.P. Putnam's Sons, The Knickerbocker Press, 1901), 369-390. This latter version contains footnote translations of Madison's sometimes extensive Latin quotations.

12. Madison, Debates, 193, 194.

13. Madison, Writings, 369.

14. Ibid., 372.

15. Madison, Debates, 122, 179.

16. Madison, The Federalist Papers, No. 18, (New York: New American Library, 1961).

17. Max Farrand, The Records of the Federal Convention of 1787, (New Haven: Yale University Press, 1966), 3:92.

18. Seed, James Wilson (Millwood, N.Y.: KTO Press, 1978), 150.

19. Wilson, "Of Man, As a Member of a Confederation.--A History of Confederacies," Works, vol. 1, James DeWitt Andrews, ed. (Chicago: Callaghan and Company, 1896), 287.

20. Ibid., 288.

21. Madison, Debates, 138.

22. Wilson, 289; Madison, Writings, 369. Although Wilson cites Federalist No. 18 among his sources, it is doubtful that he otherwise borrowed the content of his lectures from Madison. Their quotations and references are similar but different enough to reveal their independent research.

23. Reinhold, 103.

CHAPTER III

THE INSTITUTIONS: HIGHER EDUCATIONAL BACKGROUND OF THE DELEGATES

What can be expected from uninformed and ignorant minds? They know no country; they have no patriotism. . . . Zeal they may have in great abundance; but it is a zeal without knowledge, which is dangerous equally in political and religious life. Without mental and moral improvement, neither order nor civil liberty can long be preserved.

--William Paterson, Address before the Cliosophic Society, College of New Jersey, ca. 1787.

That the stage set for the creation of the Constitution had an intellectual backdrop is clear. The means by which American republicans gathered the ideas that went into erecting this backdrop are still being studied. Among the most important sources conveying political ideas and ideals to Americans of the time were contemporary institutions of higher learning.

In the eighteenth century it was not assumed that every aspiring young man would receive advanced formal intellectual training. Not even all those who went on for careers in the traditional professions found it necessary to attend college. Private tutors served many a young gentleman, and would-be professionals more often than not learned the law or medicine as apprentices to established mentors. Historian of higher education, Frederick Rudolph, has noted that in 1775 only about

one of every thousand colonists had had some college education; many of these had not graduated. There were approximately 3000 living graduates of the American colleges in 1776. Harvard's largest graduating class before 1800 was of sixty-three men in 1771.²

Although a college education was by no means for everyone, for many young white American males an advanced education in an institution of formal learning was regarded as a reliable vehicle of preferment and professional advancement. Political leaders of the colonial and early national period were far more likely than others to have attended an institution of higher education. This is nowhere more manifest than in the body of delegates to the Constitutional Convention, which included an exceptionally high number of veterans of the higher educational system.

Fifty-five men attended as delegates at least some part of the Federal Convention. By eighteenth-century standards they were a very well-educated group. Clinton Rossiter notes that "in an age when few men went to college," the delegates together held "a sum of college experience that was perhaps the most astonishing feature of the Convention."³ Of these fifty-five men, thirty-one had substantial, formal "post-secondary" education--fifty-six percent compared with, what would be from Rudolph's figures, about one-tenth of one percent of the colonists as a whole. The institutions providing this higher education included colleges, both foreign and domestic, European universities and the English Inns of Court. (See Table 3-1.) Following secondary schooling, others of the remaining twenty-four delegates had less formal

Table 3-1
TABLE OF HIGHER EDUCATIONAL DATA OF CONVENTION MEMBERS

INSTITUTION	DELEGATE	COMPLETION YEAR	SIGNER
Coll.of Phila.	Mifflin, T. (PA)	1760	YES
Coll.of Phila. Scotland. Utrecht. Williamson, H. (NC)		1757	YES
Harvard	Gerry, E. (MA)	1762	NO
Harvard	King, R. (MA)	1777	YES
Harvard	Strong, C. (MA)	1764	NO
Inner Temple	Houstoun, W. (GA)	1765-76?	NO
King's (Columbia)	Hamilton, A. (NY)	Non-grad	YES
King's (Columbia)	Morris, G. (PA)	1768	YES
Middle Temple	Dickinson, J. (DE)	1757	YES
Middle Temple	Rutledge, J. (SC)	1760	YES
Middle Temple. Oxford. France.	Pinckney, C.C. (SC)	1769	YES
New Jersey (Princeton)	Bedford, G. Jr (DE)	1771	YES
New Jersey (Princeton)	Brearley, D. (NJ)	Non-grad	YES
New Jersey (Princeton)	Davie, W. (NC)	1776	NO
New Jersey (Princeton)	Dayton, J. (NJ)	1776	YES
New Jersey (Princeton)	Ellsworth, O. (CT)	1766	NO
New Jersey (Princeton)	Houston, W.C. (NJ)	1768	NO
New Jersey (Princeton)	Madison, J. (VA)	1771	YES
New Jersey (Princeton)	Martin, A. (NC)	1756	NO
New Jersey (Princeton)	Martin, L. (MD)	1766	NO
New Jersey (Princeton)	Paterson, W. (NJ)	1763	YES
Univ. of Glasgow, Scot. Ireland.	Spaight, R. (NC)	1778 appx.	YES

INSTITUTION	DELEGATE	COMPLETION YEAR	SIGNER
Univ. of St. Andrews, Scot.	Wilson, J. (PA)	1765 apprx.	YES
William and Mary	Mercer, J. (MD)	1775	NO
William and Mary	Randolph, E. (VA)	1771	NO
William and Mary. Scotland.	McClurg, J. (VA)	1762	NO
William and Mary. Middle Temple.	Blair, J. (VA)	1755 apprx.	YES
Yale	Baldwin, A. (GA)	1772	YES
Yale. (Middle Temple?)	Livingston, W. (NJ)	1741	YES
Yale, BA. (Harvard, MA?)	Johnson, W.S. (CT)	1744	YES
Yale. Middle Temple.	Ingersoll, J. (PA)	1766	YES

"educational" experience--most commonly, reading law in the office of an established lawyer.

HIGHER EDUCATION AND THE DELEGATES--A SURVEY

Of the thirty-one delegates to the Constitutional Convention who pursued higher education, at least ten received a significant portion of that education in Europe, most notably in the Inns of Court. Among those ten, six attended the Inns, five of the six particularly, the Middle Temple.⁴ Only William Houstoun of Georgia attended the Inner Temple. One of the ten attended Oxford. Two were educated in Edinburgh, with at least one attending the University there. Another attended the University of Glasgow, one the University of St. Andrews and one, the University of Utrecht. James McClurg studied in London and Paris as well as Edinburgh. Each of the four educated abroad who did not attend the Inns of Court received a great part, if not all of his education in Scotland.

Two of those educated abroad also pursued some part of their higher education in America. In addition, some who were educated, either at home or abroad, attended more than one institution, so the number of institutions that educated amount to more than the number of delegates who attended them.

At home the sources of formal higher education were the colonial colleges. Although there were nine such American institutions operating before the Revolution and seventeen in 1787, Convention delegates had attended only six: Harvard, Yale, King's (Columbia), the College of New Jersey (Princeton), the College of Philadelphia (University of

Pennsylvania) and William and Mary. Of these, ten delegates, the most by some measure had attended the College of New Jersey. Four each had attended Yale and William and Mary; three, Harvard, and two each King's and Philadelphia (though one of those attending King's, Alexander Hamilton, and one attending Princeton, David Brearly, did not graduate).

A look at the time periods when delegates were pursuing their educations (as noted by graduation or completion dates) is also instructive. (See Table 3-2.) Of the twenty-four American collegians, two graduated in the early 1740s (1741 and 1744 but with one of these earning an M.A. in 1747). Two graduated in the mid-fifties ('56 and '57) with another, John Blair, finishing up at William and Mary at an unknown date but before 1755. Five graduated between 1760 and 1764 (with Brearly also apparently attending in this time frame), three in '66 and two in '68. Four completed their college work in the years 1771 and 1772 and four more graduated between 1775-77, with Hamilton dropping out also during this period because of the Revolutionary War. There were three sets of classmates in the group, all from the College of New Jersey: Oliver Ellsworth and Luther Martin from the Class of '66, James Madison and Gunning Bedford, Jr. from the Class of '71, and William R. Davie and Jonathan Dayton from the Class of '76.

Those attending the Inns of Court finished in 1755, 1757, 1760, 1769, and 1776, with Houstoun, the lone Inner Templar, finishing at a date unknown, but presumably between 1765-76. (Rossiter says Houstoun "made his own choice for the patriot cause while reading law at the Inner Temple.")⁵ Though it is difficult to ascertain exact dates, the remaining expatriates, or at the time non-Americans, except for Richard

Table 3-2
CONVENTION MEMBERS BY GRADUATION OR COMPLETION DATES

COMPLETION YEAR	DELEGATE	INSTITUTION	SIGNER
1741	Livingston, W.	Yale (Middle Temple? 1742)	YES
1744	Johnson, W.S.	Yale BA (Harvard MA ?)	YES
1755 apprx.	Blair, J.	William and Mary. Middle Temple.	YES
1756	Martin, A.	New Jersey	NO
1757	Williamson, H.	Coll. of Phila. Scotland. Utrecht.	YES
1757	Dickinson, J.	Middle Temple	YES
1760	Mifflin, T.	Coll. of Phila.	YES
1760	Rutledge, J.	Middle Temple	YES
1762	Gerry, E.	Harvard	NO
1762	McClurg, J.	William and Mary. Scotland.	NO
1763	Paterson, W.	New Jersey	YES
1763? (non-grad)	Brearley, D.	New Jersey	YES
1764	Strong, C.	Harvard	NO
1765 apprx.	Wilson, J.	Univ. of St. Andrews, Scot.	YES
1765-1776?	Houston, W.	Inner Temple	NO
1766	Ellsworth, O.	New Jersey	NO
1766	Martin, L.	New Jersey	NO
1766	Ingersoll, J.	Yale. Middle Temple.	YES
1768	Morris, G.	King's	YES
1768	Houston, W.C.	New Jersey	NO
1769	Pinckney, C.C.	Middle Temple. Oxford. France.	YES
1771	Bedford, G. Jr.	New Jersey	YES
1771	Madison, J.	New Jersey	YES
1771	Randolph, E.	William and Mary	NO
1772	Baldwin, A.	Yale	YES
1774 (non-grad)	Hamilton, A.	King's	YES
1775	Mercer, J.	William and Mary	NO
1776	Davie, W.	New Jersey	NO
1776	Dayton, J.	New Jersey	YES
1777	King, R.	Harvard	YES
1778 apprx.	Spaight, R.	Univ. of Glasgow, Scot. Ireland.	YES

Dobbs Spaight, appear to have completed their foreign study before 1770, with one, James Wilson, having completed before 1765. Spaight appears to have finished at the University of Glasgow sometime before, but not too much before, 1778.

Of the thirty-one delegates, then, who were formally educated at a post-secondary level, nineteen completed their studies after the Stamp Act crisis of 1765. At least four of these, and possibly six, finished in 1776 or later. These nineteen may be expected to have had a different political education than the others. Consistent with the Stanley Elkins-Eric McKittrick thesis that many of the founders were "young men of the Revolution," united by a common cause and a continental vision, higher education served as a primary means by which young men associated with students from other states while developing their political minds. Yale Convention members, for example, came from throughout the colonies--each Yale graduate representing a different state: Connecticut, New Jersey, Pennsylvania, and Georgia. The ten from Princeton came from six states and the six Inns of Court members came from five.⁶

Some state delegations were more heavily weighted with formally educated members than others. All five of the New Jersey delegates were among those with higher learning. Four higher-educated delegates each came from Virginia, North Carolina, and Pennsylvania; Massachusetts sent three; Connecticut, Delaware, Maryland, South Carolina and Georgia, two each; New York, one (Hamilton, the non-graduate) and New Hampshire, none.

THE INSTITUTIONS

As noted, Convention delegates had attended only six of the American colleges, two of the four Inns of Court, and a variety of European, mostly Scottish, universities. Although the College of New Jersey and the Inns of Court are the most important of these for their disproportionately large contribution to the numbers of the Convention, other institutions too contributed significantly to the education of important members of the Convention. A review of the institutions that formed the delegates' political minds and the delegates' associations with them is here in order.

Yale College

Yale was established in 1701 as a collegiate school to prepare Congregational ministers, then rechartered and incorporated in 1745. It ranks with William and Mary as second among the colonial colleges in the number of delegates it produced (four each as compared with Princeton's ten). The Convention's Yale graduates were William Samuel Johnson, William Livingston, and Abraham Baldwin and Jared Ingersoll. Johnson was one of the best educated men at the Convention. In addition to his Yale bachelor's degree (1744), he earned a master's degree. Sources conflict on whether it was from Yale or Harvard, but if the former, then he also received an honorary master's from Harvard in 1747. He spent some time in England, during which he won the "praise of the Dr. Johnson," and was awarded honorary master's and doctorates from Oxford. At the time of the Convention, he had just been appointed president of King's College.⁷

Livingston, the only New Jersey delegate that did not go to Princeton, earned his Yale A.B. in 1741, long before the great majority of his Constitutional Convention colonial collegiate colleagues and long before political matters reached a crisis between America and its King.⁸

Perhaps the most important of the Georgians who contributed to the construction of the Constitution was Abraham Baldwin. A Yale graduate of 1772, his academic credentials were strong. He spent four years as a tutor, but declined a professorship of divinity at Yale in 1781.⁹

The College of William and Mary

William and Mary, established in 1693, was the second oldest college in the colonies. As noted by Madison's father's unfriendly attitude toward the school, during the years when most of the delegates were being trained and taught, the college was going through internal struggles that detracted from its academic reputation.¹⁰ Nevertheless Virginia sent the sons of many of its most prominent families to the Williamsburg campus. Graduates at the Convention included Edmund Randolph, 1771; James McClurg, 1762; John Blair, before 1755; and John Francis Mercer, 1775.¹¹

Randolph is by far the most important of these in the Convention. He entered the School of Philosophy at William and Mary in June 1770. For two years he was elected to a "studentship," which provided an annual stipend of thirty pounds, plus room and board. He made a good impression at the school and was asked to deliver the college founder's day speech in 1771, during the course of which he exhorted, "Let future statesmen, future lawyers, future divines, here spring up, but such statesmen, such lawyers, such divines, as shall strive to do honor to

their family, their country, their Alma Mater." Randolph resigned his studentship two or three months before completing the school of philosophy program in order to begin his legal studies.¹²

Harvard College

America's oldest academy of higher education gave three graduates to the Convention, all from Massachusetts, and each of whom made a genuine contribution to the eventual outcome of the summer's endeavors.

The Harvard of the 1760s and 70s was going through the transition of several presidents, each of whom left to some degree his own stamp on the institution. By 1762 the college was decidedly liberal for its day in terms of religion and, as much if not more, than the other colonial colleges quickly found itself caught up in the Anglo-American political crises. The Massachusetts legislature took over the college halls when British troops occupied Boston in 1769 and the British invasion of Massachusetts forced the school to convene in Concord for about eight months between 1775 and 1776. Through these and other events the students became highly politicized, often splitting among themselves into factions over the issues of the day (such as whether or not to drink British tea).¹³

Elbridge Gerry entered Harvard at age fourteen and graduated in 1762. This same year the Harvard overseers asked the faculty to devise a plan to improve classical learning, including particularly Horace and Caesar's Commentaries. Gerry's early interests included the classics, ancient history and political theory. Though not a great deal survives describing his personal college experience, his biographer indicates that Gerry's master's thesis of 1765 was an affirmative response to the

question "Can the new Prohibitory Duties, which make it useless for the people to engage in Commerce, be evaded by them as Faithful Subjects?" Unfortunately the thesis itself has not survived.¹⁴

Rufus King entered Harvard in 1773 and graduated in 1777 at the head of his class with "distinction for his classical and literary attainments, and for his oratorical powers, which he had studiously cultivated" as well as in mathematics. Like many of the other delegates, his classical studies appear to have especially affected him--a letter he writes in 1820 bemoans the lack of instruction in the classics in the Harvard of the nineteenth century. Some of his other interests may be reflected in the books he borrowed from the Harvard library which Robert Ernst says included histories of Scotland, Poland and Sweden; Pye's Moses, a quarto volume of Bolingbroke, Beccaria's Essay in Crimes and Punishments and issues of the Annual Register and State Tryals. He also joined a secret speakers' club, whose existence members kept so quiet that mere mention of its name was grounds for expulsion. Little is known about the club, but King's recitations during the course of its existence included "A Piece of Whigism" and "Speech of Quintus to the Romans."¹⁵

Caleb Strong graduated in 1764 with highest honors. Of special note is the oration he gave at his "second commencement" in 1767--Strong took the affirmative position on the issue "Does a Promise that has been given Bind the Highest Magistrate in a Civil Government?"¹⁶
King's College

Only Gouverneur Morris and Alexander Hamilton among the delegates attended King's College.

Before attending college, Hamilton had come under the influence and tutelage of the Reverend Hugh Knox, an Ulster Scot, alumnus of the College of New Jersey, and Presbyterian minister who, impressed with the young man's talent, used his influence to prepare Hamilton for a higher education. Intending a Princeton education, Hamilton studied in New Jersey and did prodigiously well on his entrance exams. However, the trustees rejected his proposal to President Witherspoon that he be admitted to the college on Hamilton's own terms, that is, that he be allowed to advance from one class to the next as quickly as he could show mastery of the materials. This being the case, he sought admission to King's where his terms were accepted. Forrest McDonald says in his biography of Hamilton that he "virtually completed the course of instruction in less than two and a half years, though he never took a degree."¹⁷

Hamilton matriculated at King's in 1774 but his college education was interrupted by the war. His papers include little correspondence from this period and almost none that suggest anything about what he studied or activities in which he was involved. It is clear, however, that he was reading and writing revolutionary pamphlets at this stage of his life. Wills strongly argues that he was, like Madison, much immersed in the writings of the Scottish Enlightenment during this time, particularly the works of David Hume. A Hamilton biographer, Jacob Cooke, agreeing that he was an exceptionally gifted student, says that Hamilton became acquainted from the King's library with the writings of Plutarch, Pufendorf, Grotius, Burlamaqui, Hobbes, Locke, Montesquieu, Blackstone and Hume.¹⁸

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enormous contribution made by Scotland to eighteenth-century American education is apparent.

Scottish higher education went through a great transition in the eighteenth century. Unlike in England, whose literary and scientific leaders were often found outside the universities, in Scotland the university was at the heart of the Enlightenment. Young men no longer went abroad to learn the arts and sciences, but attended the five Scottish universities instead. Medical training especially became an exportable feature, which is why McClurg and Williamson must have thought it profitable to study medicine in Scotland.²¹

James Wilson was a Scot and an important figure for the Federal Convention. The son of poor parents, he entered the University of St. Andrews as a scholarship student in 1757. Much like his American colleagues, he studied Latin, Greek, mathematics, logic, moral philosophy, ethics, and natural and political philosophy. St. Andrew's faculty members newly arrived from Edinburgh brought with them Enlightenment thinking that Wilson later helped transmit to Americans. Wilson spent five years at the University before his father's death brought his formal schooling to an end. Lack of opportunity in Scotland drove him to America where he taught from 1765 to 1766 at the College of Philadelphia until he could afford to study law under John Dickinson.²²

Richard Dobbs Spaight attended school in Ireland as well as the University of Glasgow. The dates are not certain but he was back in America before 1778.²³

The Inns of Court

Educating the second greatest number of delegates, including some of those most responsible for the success of the Convention, the Inns of Court in London were, and had been since the early 1500s, the sole entities whose right it was to call barristers to the Bar. Hence they served as the primary institutions for educating aspiring lawyers. These associations consisted of the four inns, Lincoln's, Gray's and the Inner and Middle Temples, where students came to reside, take meals together, study, and occasionally attend "readings" given by sergeants-at-law (formerly those who presented the suitor's case at court). Their central location facilitated attendance by students at the courts of Westminster and gave them contact with England's most eminent lawyers and judges.

The Middle Temple was the most popular of the Inns of Court among American colonials. Among the delegates this was by far the case. At a minimum five of the delegates to the Convention were Middle Templars: John Dickinson of Delaware, Jared Ingersoll of Pennsylvania, John Blair of Virginia, and Charles Cotesworth Pinckney and John Rutledge of South Carolina. In addition Chroust says William Livingston "was admitted to the Middle Temple in 1742, but preferred to study law first with James Alexander and later with William Smith, Sr., and was licensed in 1748."²⁴ The question has already been raised about whether Charles Pinckney ever made it to London for his studies, but he too had been destined for the Middle Temple. By contrast only Houstoun, the sole other delegate trained at the Inns, was not from the Middle Temple.

Jared Ingersoll, John Blair, and William Houstoun

Three veterans of the Inns of Court were of limited importance to the Constitutional Convention. Ingersoll made only one speech on the last day; Blair made none; neither sat on any committees. Houstoun spoke little.

Ingersoll graduated from Yale in 1766. From a loyalist family, he went to England in 1773 where he spent three years at the Middle Temple and roughly another two years at travel and study in Europe. By 1778 he had abandoned any Tory sympathies he may have held and returned to Philadelphia to practice law.²⁵

Blair was a product of William and Mary (which his father's uncle founded), as well as of the Middle Temple. Some sources say he returned to Virginia from England in 1755; Chroust, however, has him being admitted to the English Bar in 1757.²⁶

Very little is known about Houstoun, let alone the details of his education. Charles Beard notes that his English education included studying law at the Inner Temple, but then quotes William Pierce as saying that Houstoun had little to boast of in the way of political or legal knowledge. As earlier noted, Rossiter simply says that it was while at the Inner Temple that Houstoun took up the American patriot cause.²⁷

Charles Cotesworth Pinckney

Charles Cotesworth Pinckney, second cousin to delegate Charles Pinckney, spent most of his youth in England where his father was a colonial agent. Sixteen years abroad gave him the opportunity to acquire what Rossiter says was perhaps the best education of any of the

framers. After some initial schooling he enrolled at Westminster where he was an adept and apparently serious pupil of Greek, Latin and some Hebrew.²⁸

In 1764, at about age nineteen, he matriculated at Christ Church, Oxford. The Alumni Oxonienses 1715-1886 lists Pinckney as a student but does not show him to have taken a degree. It does list him as a Barrister-at-law, however, and it was also in January 1764 that Pinckney became a Middle Templar.²⁹

At the Temple Pinckney seems to have been a conscientious student. His famous contemporaries at the Inns appear to have included Oliver Goldsmith who, beginning to succeed as a litterateur, had Middle Temple quarters between or about 1764 and 1767. More importantly, quartered below Goldsmith, William Blackstone himself was a member of the Middle Temple contemporaneous with Pinckney.³⁰

In 1768 Pinckney abandoned his legal studies for a year while he took the conventional young gentleman's tour of the Continent. His activities included attendance at the Royal Military Academy at Caen, France and according to one source, during this period of his life, he studied chemistry, botany and military science under leading authorities. Following his tour, he returned to England, completed his formal studies and was admitted to the Bar in 1769.³¹

John Dickinson

The product of three colonies (born in Maryland, reared and settled in Delaware, pursued extensive professional life in Pennsylvania), John Dickinson was one of the older members of the Convention and one of the earlier ones to frequent the Inns of Court.

Born in 1732, he attended the Middle Temple in the 1750s and was called to the Bar in 1757, the same year according to Chroust, as was John Blair.³²

Dickinson came to the Constitutional Convention with an outstanding reputation as a lawyer and a statesman and was one of those delegates most prone to call on history and the example of the British constitution to promote his arguments in the Convention.

John Rutledge

John Rutledge, one of the most prominent delegates from South Carolina, began his education under the tuition of his father who had himself had an incomplete education at Trinity College, Dublin. When John's mother, who had high hopes for her son, discovered her husband was a less than suitable tutor in Greek and Latin, she insisted his education be turned over to Dr. David Rhind, a renowned Charlestonian tutor. Little difference it made in some respects because the boy showed no interest in ancient languages and he derided the arts and literature as subjects of serious study. He excelled in math, however, and early took a liking to law. After his father's death, he studied law at as early an age as twelve in his uncle's law office. For entertainment, he regularly attended the sessions of the South Carolina legislature.

At age eighteen Rutledge went to England and entered the Middle Temple; he was admitted to the English bar in 1760, following which he spent three months at the University of Dublin. To his mother's regret, he had to leave Ireland to return home for financial reasons, but he

expressed little concern, telling her that he had written a thesis there and been accepted as a member of the University.³³

The College of New Jersey

Both in terms of how many and which delegates it educated, the College of New Jersey, located at Princeton, made the most substantial contribution to the American Constitution of any institution of higher learning. The College of New Jersey was one of a handful of American colleges born of the Great Awakening--the passionate religious revival that began in the 1740s. Liberal "New Light" or "New Side" Presbyterians, who had been considerably successful in bringing about religious conversions, countered criticisms that they were illiterate zealots without knowledge by establishing an institution of higher learning to train their ministers. The school was chartered in 1746, opened in Elizabethtown (1747), moved to Newark (1748), and found a final resting place in 1756 in Princeton.³⁴

To an extent, the college continued to be divided by controversy in each succeeding year as the Presbyterian factions jostled for control or contended with the Church of England. The controversy found early links to politics as New Lights fought efforts to establish an American Anglican bishopric. Opposition to the established Church made it relatively easy for college supporters to oppose other things British.³⁵

The rift at the college was fairly well healed, however, by the time John Witherspoon arrived from Scotland in 1768 to take over the institution's presidency (To Benjamin Rush, who finally prevailed on him to accept the position in America, he insisted that the controversy end before his taking the reins). With the coming of Witherspoon, the

Scottish Enlightenment came to New Jersey and with it a gradual transformation came to the college. It was largely Witherspoon's influence that determined that when James Madison arrived at Princeton in 1769, the school "was in the process of remaking--from a good (and highly religious) school to an even better (and highly political) school."³⁶

College of New Jersey alumni who attended the Constitutional Convention ranged chronologically from graduates of the Class of 1756 to the Class of 1776. Only three of the ten graduated before 1765, however, and one of those three, William Paterson, remained closely enough associated with the college to receive a master's degree in 1766. As has been noted, the school at Princeton produced the most Convention delegates by more than double the number of any of the other colonial colleges. In addition to Paterson, the College of New Jersey alumni at the Convention included William Churchill Houston, William R. Davie, Jonathan Dayton, Alexander Martin, Gunning Bedford, Jr., David Brearly, Oliver Ellsworth, Luther Martin, and James Madison.

William Churchill Houston, William Richardson Davie, Jonathan Dayton, and Alexander Martin

Little is known about the formal educations of the four Princetonians who played only minor roles at the Constitutional Convention. It does appear that classmates Jonathan Dayton and William R. Davie of the Class of '76 were of dissimilar intellectual bents during their school days, as they belonged to opposing student debating societies. Dayton was a Cliosophic (under the pseudonym "Burke"), while Davie joined the Whig Society. These societies officially existed to

sharpen students rhetorical and oratorical skills, but also served as a convenient forum for the expression of political ideas. In addition to Davies' participation with the Whigs, one unverifiable report notes that at some time during the course of his college experience he led a group of undergraduates to Elizabeth, New Jersey, to join the American revolutionary army.³⁷

Another Princetonian, William Churchill Houston of the Class of '68, left Philadelphia before the framers' business was finished. Houston had been a promising scientist who might have become better-known had not the Revolution interrupted his career. Though McLachlan notes that Houston "won no honors" as a student, his academic credentials were strong and he stayed on at Princeton in turn as master of the preparatory grammar school that fed the college, librarian, keeper of the scientific apparatus, and tutor to the junior class. His pupils included James Madison.³⁸

Also a walkout from the Convention, Alexander Martin, was a moderate Federalist who eventually supported the Constitution. He graduated from Princeton in 1756, seven years before the earliest of the other delegates from his alma mater and, perhaps significantly, nearly a decade before serious political controversy erupted with Great Britain. It is known that in college he purchased copies of Plato, and Locke. If for nothing else, Martin should be credited as among those who convinced the young James Madison to pursue his education at the New Jersey College.³⁹

Gunning Bedford, Jr. and David Brearly

It appears that Gunning Bedford, Jr. enrolled at the Philadelphia Academy from 1766 to 1768 to do college preparatory studies, making his likely enrollment date at Princeton 1768. Not much is known about his higher education. He was a member of the American Whig Society, possibly a charter member, and his classmates included Madison; Hugh Henry Brackenridge, future poet, novelist, satirist, polemicist, Presbyterian clergyman, teacher, lawyer, jurist, publisher, editor and public official; Philip Freneau, who later became a poet, teacher, soldier, seaman, merchant, journalist, and farmer, all three of whom took leading roles in the Whig Society's "Paper War" against the Cliosophs.

One apocryphal story about his years at the New Jersey college recounts that Bedford was married during his undergraduate years and that Mrs. Witherspoon tended their first child while Mrs. Bedford attended commencement exercises where her husband was giving a valedictory speech on "Benevolence." The author of The Princetonians 1769-1775 doubts the veracity of this tale, however, making his marriage more likely to have taken place in 1772 or 1773 with his wife in attendance when Bedford received his master's degree in 1774.⁴⁰

The picture of David Brearly's higher education is confusing. Beard quotes the Biographia Americana as saying he "received the honors of Princeton at the age of eighteen." The editors of The Documentary History of the First Federal Elections say, "he attended the College of New Jersey (Princeton), but did not graduate." Rossiter says his education was mostly informal but that "he apparently made enough of an

impression on President Witherspoon to be awarded Princeton's honorary M.A. in 1781."⁴¹

Oliver Ellsworth

A member of the College of New Jersey Class of '66, Oliver Ellsworth had been intended by his father for the ministry and had prepared for higher education under the tutelage of Rev. Joseph Bellamy, a "New Light" minister and disciple of Jonathan Edwards. Ellsworth entered Yale in 1762 but, discontented, after two years transferred to Princeton.

Like so many others the record of his years at college is very sparse. His roommate was Waightstill Avery and Ellsworth did not become a minister as his father desired. Tradition assigns him a chief role in organizing the debating club, the Well-Meaning Society (later the Cliosophic Society). He did not graduate with the highest honors.⁴²

Luther Martin

Luther Martin, lawyer and public official, and Oliver Ellsworth's Princeton classmate, graduated from college at age eighteen. Though some have accused him of exaggerating his class standing, he wrote that he graduated "first in the languages, and second to none in the sciences."⁴³

Martin reported that his college studies included Hebrew and French, in the latter of which he became a "tolerable master." While at college he became close friends with his future fellow delegate, William Paterson. He joined Paterson's Well Meaning Club and is numbered among the founders of the Cliosophic Society.⁴⁴

William Paterson

One of the most important delegates at the Convention for purposes of evaluating his higher educational background was William Paterson of New Jersey. Of more humble beginnings than many of his associates, he, perhaps as much, if not more than any of the delegates, saw education as his open door to respectability. Among the Founders he certainly left the best records of his higher educational experience. He produced hundreds of pages of notes and essays during his college years, many of which have survived. In the opinion of his biographer, John O'Connor, these essays contain the "germs of the political ideology that would bring him to support the American Revolution." He says Paterson "held onto the essentially conservative framework of political and social ideas he learned at Princeton for the duration of his life."⁴⁵

Born in Ireland, Paterson came to America as a child and grew up almost literally within the shadow of the College of New Jersey. Nassau Hall was a mere 180 yards from his father's shop and the home where Paterson was reared. He entered the freshman class in 1756, his classmates including Tapping Reeve, the "to be" someday noted American jurist.⁴⁶

Graduating in 1763, Paterson stayed on at the college for a time to pursue a master's degree, studying law simultaneously. After receiving his graduate degree, he continued to maintain close ties with Princeton throughout his life, serving as a trustee of the College as early as 1787 and as late as 1802. Overall Paterson's contributions to the institution, even as a young man, were such that Garry Wills says

when James Madison arrived at the college, Paterson was "a kind of a campus legend."⁴⁷

James Madison

James Madison, Jr. was ultimately the most distinguished of the delegates to graduate from the College of New Jersey. His scholarly inclinations began as a boy and early on he fell under the influence of the eighteenth-century Scottish philosophers. His first tutor, Donald Robertson, a Scotsman educated in Aberdeen and Edinburgh, was "a product of the Scottish Enlightenment at its peak."⁴⁸

Following further tutoring under Thomas Martin, an enthusiastic Princeton graduate, Madison himself matriculated at the New Jersey college--encouraged by Martin and his brother Alexander (a Princeton alumnus who would sit with Madison at the Federal Convention). Disturbed by the High Church inclinations of the William and Mary faculty, James Madison, Sr. further prompted his son's decision to go north for his education.⁴⁹

Madison's first tutor at the college was Samuel Stanhope Smith, later Princeton's president, with other faculty members being Tapping Reeve, the jurist, and William Houston of North Carolina--another who was later to join Madison at the Convention. Under the direction of these pedagogues he mastered the classics and did well in the general curriculum. Surreptitiously he indulged in some Voltaire (of whom Witherspoon disapproved). He studied hard, sometimes sleeping over lengthy periods for as little as five hours a night despite (or perhaps because of) a sickly disposition.⁵⁰

Under the influence of President Witherspoon, Madison was further engaged in the controversies of the Scottish Enlightenment almost from the beginning, reading Francis Hutcheson; Adam Ferguson; Henry Home, Lord Kames; Thomas Reid; David Hume and Adam Smith.⁵¹

The young Virginian's personal record of his higher education is sketchy. He did write occasional letters to his father in which he describes the commencement ceremonies of 1769, discusses his mentor Witherspoon's fundraising trips, and expresses the affection he has acquired for the Scotsman. In one letter in 1770 he enthusiastically recounts how protesting students burned a letter from unpatriotic New York merchants to the merchants of Philadelphia which had audaciously asked the Philadelphians to break the current boycott on British imports.⁵²

At college Madison was an active, perhaps founding member of the American Whig society, in which capacity he energetically debated the Cliosophic Society on the affairs of Government and society--in addition to writing occasional coarse doggerel about them and participating in his share of expected youthful pranks. (Still Witherspoon said Madison always behaved himself while at Princeton).⁵³ His closest school friends included Brackenridge and Freneau. Following graduation in 1771, Madison stayed on to learn some Hebrew under Witherspoon and began reading law locally.⁵⁴

SUMMARY

There is little question that higher education was a dominant quality in the pool of characteristics that made up the delegates to the

Federal Convention. By the standards of their day, the framers were brimming with formal higher education.

Of interest is the fact that only twenty of the thirty-one delegates with higher education ultimately signed the Constitution, a lower percentage of signers than in the Convention as a whole. However, these figures can be misleading. The eleven non-signers among the educated included only three who outright opposed the Constitution: Luther Martin, John Francis Mercer, and Elbridge Gerry. Edmund Randolph declined to sign, but eventually supported the fight for ratification. Alexander Martin made no real contribution to the proceedings either way and left the Convention early. Three men, Caleb Strong, William Davie and Oliver Ellsworth, clearly supported the Constitution but also left the Convention before it was time to sign. Of the others James McClurg and William Houstoun appear to have been supportive of the final document, but played little role in its creation and ratification, and William Churchill Houston left the Convention after only a week because he was mortally ill.

Statistics reveal no special patterns of opposition to the Constitution within particular educational institutions. Of the three educated opponents, one attended Harvard, one William and Mary, and one Princeton. Of the non-signing supporters, (assuming McClurg and Houstoun as supporters) one attended Harvard, one William and Mary, two Princeton and one the Inner Temple. Edmund Randolph, the man in the middle, attended William and Mary. Only two of the nineteen delegates who completed their educations after 1765 opposed the Constitution. However, in discussing the intellectual roots of the Constitution, too

much can be made of whether particular founders ultimately supported the document, for it is possible for a delegate to have contributed important ideas to the document and still have found himself disapproving the final product.

A majority of the Convention members, then, had formal higher education in their backgrounds. But even if one admits that the number of delegates with higher education was extraordinarily high, one cannot conclude on that basis alone that higher education contributed anything in the way of intellectual background or political philosophy and ideology to the Constitution. Although thirty-one of the fifty-five delegates had substantial higher education, there remain another twenty-four who did not. Often higher education merely served as one more of the several means by which the colonial elite reaffirmed their privileged status.

And not all the delegates made meaningful contributions to the Convention. In order to better assess the nature of higher education's contribution to American constitutional thinking, therefore, it must first be determined which delegates actually created the Constitution and the extent of the contribution of those with higher education among them.

NOTES

1. William Paterson, Paterson Papers; unpublished address in Paterson Papers, Manuscript Division of Princeton University Library, Folder 2, Box 1.
2. Frederick Rudolph, The American College and University: A History (New York: Alfred A. Knopf, 1962), 21-22.
3. Clinton Rossiter, 1787: The Grand Convention (New York: W.W. Norton & Co, 1987), 146-47.
4. Another delegate, Charles Pinckney, was intended for the Inns of Court. Although Anton-Hermann Chroust says he was there in 1773, Rossiter says he was "deprived" of the opportunity. Rossiter is apparently correct; Chroust, The Rise of the Legal Profession in America, vol. I (Norman, Oklahoma: University of Oklahoma Press, 1965), 308; Rossiter, 132.
5. Rossiter, 136.
6. Elkins and McKittrick, "The Founding Fathers: Young Men of the Revolution." Political Science Quarterly 76 (June 1961): 181-216. Founders completing their educations after 1765 include Madison, Gouverneur Morris, Hamilton, Ellsworth, Luther Martin, both Pinckneys, Randolph, and Rufus King.
7. Rossiter, 90; Robert G. Ferris and James H. Charlton, The Signers of the Constitution (Flagstaff, Arizona: Interpretive Publications, Inc., 1986), 178-179.
8. Rossiter, 98, 251.
9. Ibid., 134, 251.
10. Irving Brant, James Madison: The Virginia Revolutionist 1751-1780 (New York: Bobbs-Merrill, 1941), 67-70; See also Dumas Malone, Jefferson the Virginian (Boston: Little, Brown, and Company, 1948), 50-61.
11. Rossiter, 251; Earl Gregg Swem, "John Blair," Dictionary of American Biography vol. 1, part 2, Allen Johnson, ed. (New York: Charles Scribner's Sons, 1961), 337, and Freeman H. Hart, "James McClurg," vol. 6, part 1, Dumas Malone, ed., 596.
12. John J. Reardon, Edmund Randolph: A Biography (New York: Macmillan Publishing Co., Inc., 1974), 12-14; Moncure Daniel Conway, Omitted Chapters of History in the Life of Edmund Randolph (New York: G.P. Putnam's Sons, 1888), 4.

13. Josiah Quincy, History of Harvard University (New York: Arno Press, 1977), 105, 163-164; Samuel E. Morison, Three Centuries of Harvard (Cambridge, Mass.: Harvard University Press, 1936), 83, 90-91; See also Historical Register of Harvard University 1636-1936 (Cambridge, Mass.: Harvard Press, 1937).

14. The median age for freshman in 1741 was fifteen years; in 1769 it was seventeen; Morison, 102; Quincy, 130; George Athan Billias, Elbridge Gerry: Founding Father and Republican Statesman (New York: McGraw-Hill Book Company, 1976), 6-7.

15. Charles R. King, ed. The Life and Correspondence of Rufus King, vol. 1 (New York: G.P. Putnam's Sons, 1894), 3-10, and vol. 6, 345. Robert Ernst, Rufus King: American Federalist (Chapel Hill, N.C.: University of North Carolina Press, 1968), 18-19. I have been unable to identify "Quintus." Plutarch makes no mention of anyone of that name. Possibly it refers to Cicero's philosopher friend, Titus Pomponius Atticus (109-32 B.C.), who for some time used the pseudonym Quintus Caecilius Pomponianus.

16. Henry Cabot Lodge, A Memoir of Caleb Strong: United States Senator and Governor of Massachusetts 1745-1818 (Cambridge, Mass.: Press of J. Wilson and son, 1879.), 5; Massachusetts Historical Society, Sibley's Harvard Graduates, vol. 16, Boston, 1972), 94.

17. Forrest McDonald, Alexander Hamilton: A Biography (New York: W.W. Norton & Company, 1982), 12-13.

18. Alexander Hamilton, The Papers of Alexander Hamilton, vol. 1, Harold C. Syrett, ed. (New York: Columbia University Press, 1961), 80; vol. 26, p. 353; Wills, 63-71; Jacob Ernest Cooke, Alexander Hamilton (New York: Charles Scribner's Sons, 1982), 8; see also McDonald, 13.

19. Howard Swiggett, The Extraordinary Mr. Morris (Garden City, N.Y.: Doubleday & Company, Inc., 1952), 14; Theodore Roosevelt, Gouverneur Morris (Boston: Houghton Mifflin Co., 1898), 19.

20. J.C. de R. Hamilton, "Hugh Williamson," Dictionary of American Biography vol. 10, part 2, Dumas Malone, ed. (New York: Charles Scribner's Sons, 1936), 298; Rossiter, 127, 166.

21. J.D. Mackie, A History of Scotland (Middlesex, Eng.: Penguin Books, 1966), 301-302; Douglas Sloan, The Scottish Enlightenment and the American College Ideal (New York: Teachers College Press, 1971), 14, 15, 18-19, 26-28. The five Scottish universities were the universities of Glasgow, St. Andrew's, Edinburgh, and Aberdeen and Marischal College at New Aberdeen.

22. Rossiter, 247-248; Charles Page Smith, James Wilson: Founding Father 1742-1798 (Chapel Hill, N.C.: University of North Carolina Press, 1956), 14-18.

23. Rossiter, 129, 251; J.C. de R. Hamilton, "Richard Dobbs Spaight," Dictionary of American Biography vol. 9, part 1, Dumas Malone, ed. (New York: Charles Scribner's Sons, 1936), 419.

24. Chroust [check]

25. Rossiter, 107.

26. Rossiter, 122; Chroust, 287.

27. Charles A. Beard, An Economic Interpretation of the Constitution of the United States (New York: The Macmillan Company, 1952), 115; Rossiter, 135, 136.

28. Marvin R. Zahniser, Charles Cotesworth Pinckney: Founding Father (Chapel Hill, N.C.: University of North Carolina Press, 1967), 14.

29. Alumni Oxonienses 1715-1886, Joseph Foster, ed. (London, 1888), 1118; Zahniser, 17.

30. Zahniser, 18; Ditton, 95.

31. Ferris, 204; Zahniser, 19; Rossiter, 249.

32. Chroust, 287. But see discussion of Blair for possible conflicting dates.

33. Richard H. Barry, Mr. Rutledge of South Carolina (Freeport, N.Y.: Books for Libraries Press, 1971), 26.

34. Rudolph, 10-11; Thomas H. Johnson, The Oxford Companion to American History (New York: Oxford University Press, 1966), 657.

35. Garry Wills, Explaining America: The Federalist (Garden City, N.Y.: Doubleday & Co., 1981), 15.

36. Ibid.

37. Richard A. Harrison, The Princetonians 1776-1783 (Princeton: Princeton University Press, 1981), 26.

38. James McLachlan, The Princetonians 1748-1768 (Princeton: Princeton University Press, 1976), 643-644; Wills, 7.

39. McLachlan, 157, 159; Rossiter, 251.

40. Richard A. Harrison, The Princetonians 1769-1775 (Princeton: Princeton University Press, 1980), 131, 139, 161, 173.

41. Beard, 79; Gordon DenBoer, ed., The Documentary History of the First Federal Elections 1788-1790 vol. 3 (Madison, Wisc.: University of Wisconsin Press, 1986), 180; Rossiter, 99. Ferris and Charleton also say that Brearly attended but did not graduate from Princeton, 148.

42. McLachlan, 555-556.

43. Ibid., quotation of Martin on 579.

44. Paul S. Clarkson and R. Samuel Jett, Luther Martin of Maryland (Baltimore: Johns Hopkins Press, 1970), 14-17; McLachlan, 579.

45. John E. O'Connor, William Paterson: Lawyer and Statesman 1745-1806 (New Brunswick, N.J.: Rutgers University Press, 1979), 5, 6.

46. O'Connor, 8, 9; McLachlan, 437.

47. McLachlan, 437; O'Connor, 197, 271; Wills, 19.

48. Wills, 14.

49. Madison stayed in touch with his former teacher Martin after entering college, occasionally sending him books from Princeton. James Madison, The Writings of James Madison, Gaillard Hunt, ed., vol. 1, 1769-1783 (New York: G.P. Putnam's Sons, 1900), 1; Brant, 69-71; Wills, 14; Harrison, Princetonians 1769-1775, 160.

50. Madison, 3; Brant, 68; Harrison, Princetonians 1769-1775, 161.

51. Wills, 16.

52. Madison, 6, 8, 18.

53. Harrison, Princetonians 1769-1775, 161.

54. Ibid., 161, 173, 174.

CHAPTER IV

THE MEN: THE "REAL FRAMERS" OF THE CONSTITUTION

Judge Ellsworth objected, saying President Washington's influence while in the Convention was not very great, at least not much as to the forming of the present Constitution of the United States in 1787, which Judge Ellsworth said was drawn by himself and five others, viz--General Alexander Hamilton, Gorham of Mass, deceased, James Wilson of Pennsylvania, Rutledge of South Carolina and Madison of Virginia.

--Oliver Ellsworth, Jr. on his father's assessment of the makers of the Constitution.

Although fifty-five men attended the "Grand Convention" in Philadelphia that produced the Constitution, fewer than half that many made considerable contributions to the substance of the document. Historians agree in general, but occasionally disagree in particular, about who the primary authors of the Constitution were. Few dispute Madison's contribution as being of first importance, but it becomes more difficult thereafter to say whether James Wilson or Gouverneur Morris or someone else is next in notability. Alexander Hamilton has been placed unreservedly in the top five or ten by some historians but has not even received an honorable mention by others.²

Thus in what Clinton Rossiter calls the "indoor sport" of "ranking the Framers," no historian is an undisputed champion and probably no two would produce the same list in the same order of delegates in terms of their contributions to the Constitution. Part of the reason for these diverse results is that from one ranking to another, the rules are not the same. Different scholars for a variety of reasons have different aims for determining the importance of particular delegates. And different delegates made very different but no less essential kinds of contributions to the process of the creation.

For example, in terms of enticing the states to send delegates, in keeping the Convention together, and in sending from the Convention a document to which Congress, state legislatures and ultimately ratifying conventions would pay serious heed, Washington's presence at the head of the Convention was vital. By his lending the constitution-making process and the resultant document his towering prestige, Americans everywhere were willing to give sufficient credence to the work so as to prevent the founders from foundering at the outset. Therefore, in judging the ultimate success of the Convention, Washington must be given a high ranking indeed.

Very different results occur, however, in studies such as the one at hand which are more interested in the sources of the ideas behind the Constitution. In terms of intellectual contributions, Washington's donation was negligible. Probably wisely for the sake of intra-Convention politics, he remained silent throughout most of the debates, speaking once, only at the last. In determining who were the

philosophers and idea men of the Convention, therefore, Washington comes into play hardly at all.

Such examples should convince the student of intellectual and constitutional history that there need be no consensus, point for point, on who were the real creators of the Constitution. Still, in a study purporting to determine the contribution of higher education to early American constitutional thinking, it is necessary to determine who in the Convention were the constitutional thinkers. Which of the fifty-five delegates had the most to say about the form the Constitution would ultimately take? Although each delegate's contribution cannot be determined with scientific precision, it is not too difficult generally to conclude who the prime movers were. No futile attempt will be made here to rank them in a definitive order, but from a close look at the debates and committee work of the Convention and from a general consensus of American historians, the nineteen or twenty most important delegates surface quite readily.

The delegates' performance must be assessed both quantitatively and qualitatively--that is, by how much they said at the Convention and by how much of worth they said. Again attempts at such an assessment must necessarily approach, then attempt to avoid certain pitfalls. Quantitatively, for example, it is impossible to measure exactly the contribution of a particular delegate. The records of the Convention are too sketchy. Even the best, Madison's notes, do not tell the whole story. He could not record everything everyone said and what he did write is subject to some degree to his own biases or human penchant for error, however large or small in his case these might be. Did he, for

instance, reproduce in more detail the content of his own speeches, either from self interest or from the simple fact that he remembered them better or had written them out previously? In at least some cases it does appear so. On the other hand, it appears on occasion that he intentionally condensed speeches with which he felt no sympathy or, as in the case of at least one speech of Luther Martin's, which he found tiresome and too long.

Thus only generally can one determine how much a delegate actually spoke in the Convention. However, having said this, over the four-and-a-half month period that the Convention sat, there emerged several who so clearly had more to say than the bulk of their colleagues, that a fairly reliable quantitative assessment of the delegates' contributions becomes possible.

Even so, however, how much a delegate spoke does not necessarily correspond with the extent or importance of his contribution to the Constitution. Witness again Luther Martin, who was known for a long speech or two which contributed little of substance to the final document. Thus a qualitative as well as quantitative assessment of the framers' contributions is necessary.

The first pitfall in determining the quality of a delegate's contribution is in the meaning of the word "quality" itself. Does a "high quality" idea inevitably mean it found its way into the final Constitution? Theoretically, no, of course it does not. An unadopted idea could have made historical differences in the past two hundred years on the value of which it is impossible to speculate.

Practically speaking, therefore, there is no other way to judge the merit of a particular concept or clause of the Constitution than by how important it has been historically. This too is difficult to ascertain, however, because some provisions, such as those against the passing of bills of attainder and ex post facto laws, may have been just as important for the historical controversies that have been avoided by their presence than those that may have occurred had these provisions not been placed in the Constitution in the first place. The fact that one clause has not stirred as much litigation as another does not guarantee its unimportance. Things may have been entirely different in its absence. Again one faces the prospects of impossible speculation in determining the "what ifs" of a constitution substantially different from the one that was created.

The most that can be hoped, therefore, from an analysis of who made the more important intellectual contributions to the Constitution is that the historian, the lawyer, the judge, the politician and political scientist can suggest which constitutional concepts appear to have been made with the most foresight, accomplishing as nearly as possible what it appears they were intended to accomplish. This in itself is of no small significance. If separating the powers of the major branches of the government, for instance, was intended to prevent the evolution of the United States government into a monarchical, aristocratic or democratic despotism, then generally so far it has succeeded and those who infused the Constitution with this concept deserve lasting credit.

To analyze the importance of each clause of the Constitution and who originated it would itself be a study of massive proportions. A sufficient number of scholars have attempted such analysis for particular provisions of the document that beginning from ground zero here is unnecessary. It will be helpful for the overall implications of this study, however, to form a general synthesis of who constituted the most contributing delegates to the ideas and substance of the Constitution. Thus, following an attempt to quantify the participation of the various delegates, a qualitative ranking will be made, including a look at those whom historians of the Convention credit with the major contributions to the Constitution. This analysis will lay necessary groundwork for the later determination of the extent to which delegates derived their ideas and inspiration from their higher education backgrounds.

QUANTITATIVE ASSESSMENT: WHO SPOKE AT THE CONVENTION?

Counting the speeches of the delegates to the Constitutional Convention is not America's most popular pastime, but neither is it entirely unheard of. Several historians have assumed that the number of times the delegates spoke is of at least some significance in the overall scheme of the Convention. American legal scholar Charles Warren in 1928 indicated the top delegates in terms of the number of their speeches. Historians Robert G. Ferris and James H. Charlton credit Gouverneur Morris of Pennsylvania with 173 speeches and mention Wilson as second most loquacious. Historian Catherine Drinker Bowen notes that

Roger Sherman spoke 138 times, fewer than only Morris, Wilson, and Madison.³

But the quantitative assessments of these writers have not been derived from a standardized means of measurement--they generally mention their figures in passing only and if any of them has worked out a formula or definition of what was and was not a speech, they have not shared that formula. None states whether these estimates represent his or her own calculations or the calculations of others.⁴ As far as can be ascertained, no one has published figures for all of the delegates and explained how those figures were derived.

The present study proposes to do just that. In arriving at my own figures, no attempt has been made to differentiate long speeches from verbal participation of a lesser sort. Hence calculations here, counting strictly from Madison's notes, include motions and seconds on motions made by individuals as well as longer orations. The number of times an individual spoke is not assumed to correspond with the quality of his ideas, however. Table 4-1 lists the delegates in order of who spoke most often.

The main trend noticeable from this analysis is that participation in the Convention was dominated by a relatively small number of delegates. Only one man, Morris, spoke more than 200 times, with Wilson and Madison nearing that number. The next most talkative group of three, speaking during the proceedings respectively 161, 150 and 136 times, is Roger Sherman, Elbridge Gerry and George Mason, (the last two of whom incidentally refused to sign the finished Constitution). After this trio comes another fairly natural break followed by a group of five

TABLE 4-1
DELEGATE PARTICIPATION IN CONVENTION

<u>DELEGATE</u>	<u>NO. TIMES SPOKE</u>	<u>DELEGATE</u>	<u>NO. TIMES SPOKE</u>
G. Morris (PA)	220	J. Mercer (MD)	23
J. Wilson (PA)	199	W. Johnson (CT)	22
J. Madison (VA)	191	J. Dayton (NJ)	18
R. Sherman (CT)	161	J. Broom (DE)	14
E. Gerry (MA)	150	W. Paterson (NJ)	13
G. Mason (VA)	136	R.D. Spaight (NC)	13
C. Pinckney (SC)	107	G. Bedford (DE)	11
R. King (MA)	100	J. McHenry (MD)	10
E. Randolph (VA)	99	G. Clymer (PA)	8
H. Williamson (NC)	95	C. Strong (MA)	8
O. Ellsworth (CT)	88	A. Baldwin (GA)	8
J. Rutledge (SC)	72	D. Brearly (NJ)	7
N. Gorham (MA)	70	W. Davie (NC)	7
P. Butler (SC)	61	W. Houstoun (GA)	7
L. Martin (MD)	53	T. Fitzsimons (PA)	6
J. Dickinson (DE)	50	J. McClurg (VA)	4
C.C. Pinckney (SC)	46	W. Pierce (GA)	4
D. Carroll (MD)	34	D. St. T. Jenifer (MD)	4
B. Franklin (PA)	31	J. Lansing (NY)	4
G. Read (DE)	30	A. Martin (NC)	3
A. Hamilton (NY)	29	R. Morris (PA)	2
J. Langdon (NH)	27	W. Livingston (NJ)	2
		T. Mifflin (PA)	1
		J. Ingersoll (PA)	1
		W. Blount (NC)	1
		G. Washington (VA)	1
		G. Wythe (VA)	1

Madison made no record of speeches, motions or seconds by Richard Bassett, John Blair, William Few, Nicholas Gilman, William Churchill Houston, and Robert Yates, but Yates, Gilman and Few each sat on committees.

delegates hovering around the 100 mark: Charles Pinckney, Rufus King, Edmund Randolph, Hugh Williamson and, stretching it a bit, Oliver Ellsworth. Following a still smaller, but distinct break come John Rutledge and Nathaniel Gorham, near seventy speeches each. With sixty-one, Pierce Butler is stranded between these two and the next group of Luther Martin, John Dickinson and Charles Cotesworth Pinckney who each made approximately fifty formal spoken inputs that found their way into Madison's records. The remaining thirty-eight Convention members trail off without dramatic breaks into a fairly continuous series of contributions ranging from thirty-four to zero. Of these by far the bulk, however, twenty-six men, constituting nearly half the delegates, contributed ten or fewer times each to the proceedings.

The seventeen men who contributed around fifty or more times to the Convention came from eight states. Interestingly, the two men who dominated the debates, Morris and Wilson, polled the fewest votes in the Pennsylvania Assembly election that chose that state's eight-man delegation.⁵ The group of seventeen most talkative does not include all of the figures important to the Convention. It excludes, for example, Benjamin Franklin, Alexander Hamilton, William Paterson, William Samuel Johnson and George Washington.

In addition to those who spoke most frequently, it is interesting to note which delegates tended to speak at length. This can only be determined with great tentativeness, however, because there is no truly reliable way from Madison's notes or any other source to determine the amount of time occupied by most speeches. As apparently conscientious in general as Madison was, there are some indications that he was not

always entirely consistent. It does appear, for example, that he reported his own speeches in greater detail than those of some of his colleagues. If one looks, however, at some of the speeches acknowledged by Madison and others to have been long, such as that of Alexander Hamilton on June 18 which occupied the entire day's proceedings, or Luther Martin's three-hour discourse on June 27, then one can compare the amount of print occupying these with that of other speeches and get some idea of other delegates who occasionally made long pronouncements.

Not unexpectedly, an analysis of those speeches which occupy nearly a full page or more of the Hunt-Scott edition of Madison's notes reveals the greater number of long speeches to have been made by Madison himself. (See Table 4-2.)⁶ However, though one may suspect that Madison's speeches were not the longest, he being the reporter, one may expect more objectivity from him in reporting the speeches of others. More reliable then are the conclusions that Gouverneur Morris not only spoke most often, but also frequently at length, with ten long speeches recorded, and that Wilson and Mason each had at least five long speeches, Franklin four and Paterson, Hamilton and King, three each. Luther Martin, despite his reputation for garrulosity, is only recorded twice as having spoken extensively at one sitting, as did also Randolph, Ellsworth, John Lansing and Gunning Bedford, Jr. Gerry, Sherman, Charles Pinckney and Nathaniel Gorham also each waxed loquacious on at least one occasion. So the fact that a delegate did not make many speeches does not necessarily indicate that he did not sometimes make long speeches. Of those mentioned here for speaking at

TABLE 4-2
DELEGATES GIVING LENGTHY SPEECHES IN CONVENTION

DELEGATE	NO. OF LONG SPEECHES	TOTAL INPUTS	STATE
Madison	16	191	VA
Morris, G.	10	220	PA
Wilson	5	199	PA
Mason	5	136	VA
Franklin	4	31	PA
King	3	100	MA
Hamilton	3	29	NY
Paterson	3	13	NJ
Randolph	2	99	VA
Ellsworth	2	88	CT
Martin, L.	2	53	MD
Bedford	2	11	DE
Lansing	2	4	NY
Sherman	1	161	CT
Gerry	1	150	MA
Gorham	1	70	MA
Pinckney, C.	1	46	SC

length, neither Franklin, Hamilton, Paterson, Bedford, nor Lansing were among the seventeen who spoke most frequently.

COMMITTEE WORK

The work of the various committees of the Federal Convention was vital to the creation of the Constitution, in some ways more important than the floor debates themselves. Although historians agree that the committees were of extreme importance, even the best scholars have done little more than analyze the results of a particular committee's work. The sparse records of the Convention become even sparser with regard to who did what on most of the committees. With few exceptions therefore, one can do little more in measuring a delegate's contribution by his committee work than to note the committees on which he served. This in itself is instructive, however, when one considers that some committees made much greater impact on the Convention than others. Table 4-3 lists the delegates according to the number and names of the committees on which they sat. Table 4-4 lists the committees by membership.⁷

Table 4-3 begins with those delegates who served on the most committees and ends with those who served on none. In addition, for convenience of comparative analysis the third and fourth columns of this table indicate, respectively, the total number of speeches of each delegate, taken from Table 4-1, and the state that each delegate represented. Although little is known of what went on in each committee, one can still understand in some measure the significance of each delegate's contributions in committee work, by noting which and how many committees he sat on.

TABLE 4-3
DELEGATES' COMMITTEE MEMBERSHIP

DELEGATE	COMMITTEES	NO. OF INPUTS	ST
King, R.	(6) Rep1;Rep2;St.dbt;Nav;PP;Style	100	MA
Williamson, H.	(5) Rep2;St.dbt;Nav;Imposts;PP	95	NC
Rutledge, J.	(5) Rep1;Rep2;Sen.rep;Det;Mut.rec	72	SC
Sherman, R.	(5) Rep2;St.dbt;Sen rep;Imposts;PP	161	CT
Dickinson, J.	(4) St.dbt;Nav;PP;Sump	50	DE
Baldwin, A.	(4) Sen.rep;St.dbt;Nav;PP	8	GA
Mason, G.	(4) Sen.rep;St.dbt;Imposts;Sump	136	VA
Madison, J.	(4) Rep2;Nav;PP;Style	191	VA
Morris, G.	(4) Rep1;Rep2;PP;Style	220	PA
Gorham, N.	(4) Rep1;Det;Imposts;Mut.rec	70	MA
Johnson, W. S.	(4) Nav;Mut.rec;Style;Sump	22	CT
Livingston, W.	(3) St.dbt;Nav;Sump	2	NJ
Langdon, J.	(3) St.dbt;Nav;Imposts	27	NH
Carroll, D.	(3) Rep2;Imposts;PP	34	MD
Randolph, E.	(3) Rep1;Mut.rec;Det	99	VA
Pinckney, C.C.	(2) St.dbt;Nav	46	SC
Clymer, G.	(2) St.dbt;Nav	8	PA
Franklin, B.	(2) Sen.rep;Sump	31	PA
Yates, R.	(2) Sen.rep;Rep2	0	NY
Martin, L.	(2) Sen.rep;Nav	53	MD
Hamilton, A.	(2) Rules;Style	29	NY
Brearly, D.	(2) Rep2;PP	7	NJ
Read, G.	(2) Rep2;Imposts	30	DE
Butler, P.	(2) Imposts;PP	61	SC
Wilson, J.	(2) Det;Mut.rec	199	PA
Ellsworth, O.	(1) Det	88	CT
McHenry, J.	(1) St.dbt	10	MD
Gerry, E.	(1) Sen.rep	150	MA
Paterson, W.	(1) Sen.rep	13	NJ
Bedford, G.	(1) Sen.rep	11	DE
Davie, W.	(1) Sen.rep	7	NC
Pinckney, C.	(1) Rules	107	SC
Wythe, G.	(1) Rules	1	VA
Houstoun, W.	(1) Rep2	7	GA
Gilman, N.	(1) PP	0	NH
Dayton, J.	(1) Imposts	18	NJ
Fitzsimons, T.	(1) Imposts	6	PA
Few, W.	(1) Imposts	0	GA
Mercer, J. F.	(0) None	23	MD
Broom, J.	(0) None	14	DE
Spaight, R.D.	(0) None	13	NC
Strong, C.	(0) None	8	MA
Jenifer, D. St. T.	(0) None	4	MD

DELEGATE	COMMITTEES	NO. OF INPUTS	ST
Lansing, J.	(0) None	4	NY
McClurg, J.	(0) None	4	VA
Pierce, W.	(0) None	4	GA
Martin, A.	(0) None	3	NC
Morris, R.	(0) None	2	PA
Blount, W.	(0) None	1	NC
Ingersoll, J.	(0) None	1	PA
Mifflin, T.	(0) None	1	PA
Washington, G.	(0) None	1	VA
Bassett, R.	(0) None	0	DE
Blair, J.	(0) None	0	VA
Houston, W. C.	(0) None	0	NJ

KEY TO COMMITTEE ABBREVIATIONS:

Det- Committee of Detail
 Style- Committee of Style
 Sen.rep- Committee on representation in the Senate
 Rep1- First committee on representation in the House
 Rep 2- Second committee on representation in the House
 PP- Committee on postponed matters
 Nav- Committee on navigation acts and slavery
 Mut.rec- Committee on mutual recognition of state acts
 St.dbt- Committee on assumption of state debts
 Imposts- Committee on imposts
 Sump- Committee on sumptuary laws
 Rules- Committee on rules

TABLE 4-4
COMMITTEES OF FEDERAL CONVENTION

<u>COMMITTEE OF DETAIL</u>	<u>STYLE</u>	<u>SENATE</u>
*Ellsworth	*Hamilton	*Baldwin
Gorham	*Johnson	*Bedford
*Randolph	*King	*Davie
*Rutledge	*Madison	*Ellsworth
*Wilson	*Morris, G.	Franklin
		*Gerry
		*Martin, L.
		Mason
		*Paterson
		*Rutledge
		Yates
<u>HOUSE REPRESENTATION, 1st</u>	<u>HOUSE REPRESENTATION, 2nd</u>	<u>NAVIGATION</u>
Gorham	Bearly	<u>ACTS/SLAVERY</u>
*King	Carroll	*Baldwin
*Morris, G.	*Houstoun	Clymer
*Randolph	*King	*Dickinson
*Rutledge	*Madison	*Johnson
	*Morris, G.	*King
	Read	Langdon
	*Rutledge	*Livingston
	Sherman	*Madison
	*Williamson	*Martin, L.
	Yates	*Pinckney, C.C.
		*Williamson
<u>POSTPONED MATTERS</u>	<u>STATE DEBTS</u>	<u>IMPOSTS</u>
*Baldwin	*Baldwin	Butler
*Bearly	Clymer	Carroll
Butler	*Dickinson	*Dayton
Carroll	*King	Few
*Dickinson	Langdon	*Fitzsimons
Gilman	*Livingston	Gorham
*King	Mason	Langdon
*Madison	McHenry	Mason
*Morris	*Pinckney, C.C.	Read
Sherman	Sherman	Sherman
*Williamson	*Williamson	*Williamson
<u>STATE MUTUAL RECOGNITION</u>	<u>RULES</u>	<u>SUMPTUARY LAWS</u>
Gorham	*Hamilton	*Dickinson
*Johnson	Pinckney, C.	Franklin
*Randolph	Wythe	*Johnson
*Rutledge		*Livingston
*Wilson		Mason

*Denotes delegate with formal higher education.

Thirty-eight of the fifty-five delegates sat on at least one committee; twenty-five sat on more than one. Rufus King sat on the most, being named to six. Hugh Williamson, John Rutledge and Roger Sherman were next with five. Seven delegates sat on four committees each. Four delegates sat on three, and ten sat on two.

A comparison of those who spoke most frequently in the debates with those who performed the committee work of the Convention reveals that their contributions did not strictly coincide. Although none of those delegates who performed no committee work was among the top seventeen most frequent speakers,⁸ two of the delegates who sat on only one committee each, Elbridge Gerry and Charles Pinckney, spoke more than 100 times each in the Convention. Gerry in fact was fifth of all delegates in the number of speeches he gave and Pinckney seventh. On the other hand, Abraham Baldwin who spoke only eight times in the Convention sat on four committees; William Livingston, who spoke twice sat on three; and George Clymer, David Bearly and Robert Yates, who each spoke fewer than nine times on the Convention floor (Yates not at all), sat on two committees each.

To reverse the analysis, a look at those who spoke most shows Gouverneur Morris, the most frequent orator in the Convention, sitting on four committees. Wilson sat on two. Madison, Sherman, Mason, Gorham and Dickinson sat on four each; Randolph on three; and Butler, Luther Martin and Charles Cotesworth Pinckney on two. Ellsworth was elected to two but sat on only one, becoming ill and necessitating his replacement by Sherman on the committee for Senate representation.⁹ Although there is not a strict coincidence, therefore, between the frequent speakers

and the apparent workhorses of the committees, generally those active on the floor were also active in committee work. Among the most frequent orators, only Gerry, Pinckney and Ellsworth did not serve on more than one committee.

Of those delegates generally considered important for the Convention but not among the most frequent speakers, William Samuel Johnson sat on four committees, Benjamin Franklin and Alexander Hamilton on two, and William Paterson on one.¹⁰

The number of committees that a delegate sat on is not alone determinant of the importance of his committee work, however. It is also necessary to note which committees he sat on. Although in most cases it is difficult to assess a particular delegate's work within a given committee, it is easier to assess the overall impact of the committees themselves. Certain of the twelve committees created in the course of the Convention were essential to the construction of the finished Constitution; others were superfluous. A brief look at the purpose and contribution of each committee will corroborate this, meanwhile providing further circumstantial evidence as to the overall contributions to the Constitution of the individuals on these committees.

Committees on Sumptuary Laws, Assumption of State Debts, Imposts, and Mutual Recognition by States of Public Acts

Some Convention committees had minimal impact on the form the Constitution was to take. The last and least important of the committees to be designated, a committee to recommend the adoption of sumptuary laws, was created on September 13. With what in retrospect

was only four days remaining in the Convention, George Mason called for the appointment of this committee to "report articles of association for encouraging by the advice the influence and the example of the members of the Convention, oeconomy, frugality and american manufactures" [sic].¹¹ Mason and four of his more mature colleagues, Franklin, Dickinson, Johnson and Livingston were named to this committee but their report was never called for by the assembly.

A more important issue coming before the Convention centered on whether the national government should assume the debts incurred by the individual states, particularly during the Revolutionary War, which had benefited all, especially when some states had been thus far more responsible than others in paying their obligations. A further question arose over whether such assumption should be denied on the ground that it would, in the end, work only to the advantage of speculators, and not the original holders of such debts. On August 18 John Rutledge "moved that a Grand Committee be appointed to consider the necessity and expediency of the U. States assuming all the State debts."¹² Following debate of the question a committee was appointed which included Langdon, King, Sherman, Livingston, Dickinson, Clymer, McHenry, Mason, Williamson, Charles Cotesworth Pinckney, and Baldwin. A short time later, the Convention also commissioned these men to draft provisions governing the relationships of the United States and the militia.

The committee brought back a report granting power to Congress to "fulfill the engagements which have been entered into by Congress, and to discharge as well the debts of the U.S. as the debts incurred by the several States during the late war, for the common defence and general

welfare." By the time the Convention, including the Committee of Style, had finished with this provision, however, it had become congressional power "to pay the Debts and provide for the common Defence and general Welfare of the United States." The committee fared better on its second recommended clause which, after considerable debate, was adopted almost intact. This clause spelled out the national government's authority over the militia while reserving to the states the appointment of officers, training and discipline.¹³

The committee on imposts was appointed on August 25 to suggest a plan restricting the national government's power to force customs clearance from locations other than the states from or to which particular cargoes originated or were bound and to ensure uniform application of all imposts to all states. The committee's recommended clause so providing was adopted on August 31 following very little debate. The members of the committee on imposts were Langdon, Gorham, Sherman, Dayton, Fitzsimons, Read, Carroll, Mason, Williamson, Butler, and Few.¹⁴

August 29 saw the formation of the committee for the mutual recognition by the States of one another's public acts. Its members, Gorham, Johnson, Randolph, Rutledge and Wilson, were assigned to come up with suitable language assuring that the states would support one another in their attempts to enforce their laws. They brought back on September 1 recommendations that were taken up that day and again on Monday, September 3, which provided for each state giving "full faith and credit" to the public acts of others, with Congress determining how this faith and credit would be applied, and causing Congress to make

uniform laws respecting bankruptcy. After what was, considering the lateness of the day, a lengthy debate, the substance of these recommendations was adopted.¹⁵

Committee on Rules

It is difficult to assess the impact of the rules committee on the eventual Constitution. Directly it added nothing to the document, as that was not its purpose. However, the three men constituting this body, Alexander Hamilton, Charles Pinckney, and George Wythe, laid out guidelines by which the body should govern itself and, to the extent they were adopted, these rules would have an indirect bearing on the outcome of the Convention's efforts.

Rossiter, who has provided the best single-author analysis of the workings of the Convention, indicates that, for the most part, the rules recommended to and adopted by the members, based on the Committee's report, were the rules of the Confederation Congress. He singles out, however, "four arrangements [which] were especially important in fixing the style and procedures of the Convention": 1) voting was to be done by states with each state having an equal vote; 2) gentlemanly decorum was specified and required; 3) decisions previously adopted, though by a majority, could be reconsidered; and 4) proceedings of the Convention would be completely secret. But at the very least, the last two of these rules came from the floor, not the committee. Notwithstanding, the rules committee provided for a generally smooth-flowing procedure through which the monumental task of creating the Constitution could take place.¹⁶

Committee on Postponed Matters

Having debated each provision of the draft constitution put forth by the Committee of Detail, on August 31 the Convention named a committee to deal with matters as yet unresolved. David Brearly of New Jersey chaired this committee on "postponed" matters, whose other members included Baldwin, Butler, Carroll, Dickinson, Gilman, King, Madison, Morris, Sherman, and Williamson.¹⁷

According to Rossiter, "the major contribution of this committee was an acceptable scheme for electing the President."¹⁸ It recommended that the President be elected for a four-year term, that he be indefinitely eligible for re-election, and that he be elected by electors, each state choosing its own in whatever manner it set out. The members of this committee further provided that the presidency would go to the candidate receiving the most votes, the vice-presidency to he receiving the second most, and that the election would fall to the Senate in the event no candidate received a majority of votes.

This committee further suggested that, upon the advice and consent of the Senate, the president be allowed to make treaties and appointments, including appointments of Supreme Court justices. In addition, they recommended that the President be at least thirty-five years old, that he be a U.S. resident for at least fourteen years, that he be a natural born U.S. citizen or a citizen at the time the Constitution was adopted, that the power to try impeachments be given to the Senate, and that Congress be empowered to legislate for the "seat of government of the United States."

Finally this short-lived but important committee deserves the credit for "the clearing up of such questions as ineligibility of officers of the national government to membership in either house, the location of authority to regulate commerce with the Indian tribes, and a time limit on military appropriations."¹⁹ Although some of the recommendations of this committee, such as the executive election going to the Senate in case of a tie, were subsequently modified, the great extent to which its recommendations did prevail again illustrates how a committee succeeded in doing what would have been impossible or, at best, extremely time-consuming in the Convention as a whole.²⁰

Committee on Navigation Acts and Slavery

One of the angriest debates on the floor of the Philadelphia Convention involved the position the new constitution would take on slavery. Men of the deep South threatened, as had small-states men on the issue of representation, to reject the pending charter altogether should their interests in slavery and the slave trade be threatened. Unlike the debate on legislative representation, however, the debate on slavery did not readily polarize into two distinct camps. There were Northerners who saw no threat in slavery, Southerners who denounced it as a social evil, and, as Rossiter says, "men on both sides who simply wanted to finish the business and go home."²¹

On August 22nd, a committee was formed to deal with the matter, consisting of Langdon, Johnson, Livingston, Dickinson, Clymer, Luther Martin, Madison, Williamson, Charles Cotesworth Pinckney, and Baldwin. This committee brought back to the floor what Rossiter calls "the second major compromise of the summer." Says he, "if not so dramatic and

hard-won and honorable a bargain as the first, it was an essential step toward constructing a government that delegates from every part of the country could take home to their constituents."²²

Christopher and James Collier explain the "navigation acts" issues with which this committee dealt as centering primarily on the taxation rights of the national government on imports and exports. The states which did a great deal of importing, such as New York, Massachusetts, Pennsylvania and Virginia, had in the past levied high import taxes for themselves whose cost was passed on to neighboring states. Likewise, these states felt much less the brunt of state export taxes than did the southern states whose virtual entire economy was based on the export of rice, tobacco, and indigo.

The major trading states wanted central regulation of foreign trade, among other things, empowering the national government to negotiate trade treaties that would be uniform for all the states when dealing with foreign nations. Most states saw such involvement by the central government as a positive move, likely to take the power to tax imports away from individual states and allow import duties to be used for the benefit of all. The corresponding concern, however, was the fear of southern states that export fees levied by the national government would adversely affect the southern economy to a much greater degree than they would that of the North. Furthermore, Southerners did not want national legislation that necessitated American goods be exported in American ships, essentially giving the North a monopoly on shipping.²³

Say the Colliers:

To sum up a rather complex question, then, both North and South had very strong reasons for not wanting the other section to control commerce, but for the North it was especially critical to establish a national government that could, and would, manage trade.²⁴

The Committee of Detail had combined the navigation and slavery issues and had settled both in favor of the South. According to that committee's draft, no export taxes would be allowed, period; no import taxes would be allowed on slaves; the slave trade could not be prohibited and the passage of navigation acts would require a two-thirds vote by both houses. By the time debate on these provisions began on August 21, it was clear that they were unacceptable to many Northern delegates.²⁵

The committee created to reconcile the trade and slavery issues brought back recommendations for a four-point compromise:

- 1) Congress could not prohibit the slave trade before 1800.
- 2) Taxes could be levied on imported slaves at a rate not more than the average tax on other imports.
- 3) Exports could not be taxed.
- 4) The passage of navigation acts would require simple majorities rather than a two-thirds vote.²⁶

With the exception of changing 1800 to 1808 for the year beginning in which Congress could prohibit the slave trade, the substance of these provisions stood in the Convention as they were put forth by the committee. Their adoption marked another important watershed in the creation of the Constitution.

Committees on Representation in the House

Related to the committee for representation in the Senate were the two committees designated to determine how representation in the House

would be proportioned. The first of these was made up of five men, Gorham, King, Gouverneur Morris, Randolph and Rutledge, who met on July 6th and reported a plan on July 9th "which doled out fifty-six seats among the thirteen states . . . and left it to the legislature to augment and adjust the representation of the states in the future 'upon the principles of their wealth and number of inhabitants.'"²⁷

Upon objections by Southerners that this left control of the House in Northern hands, the second of these committees was selected on the 9th and presented the following day a report calling for sixty-five seats. The revised plan still left the majority of representatives in the North, however, and did nothing to alleviate the concern of Southern delegates that such control would ultimately threaten slavery and the Southern economy. The famous solution, temporary as retrospection shows it would be, had actually been proposed under the Articles of Confederation. It augmented Southern representation by including three-fifths the number of slaves in the total from which the South would draw its allotment of representatives. This solution came later, however, and did not emanate directly from the committees on representation in the House.²⁸

Committee on Representation in the Senate

A committee without which there would have been no Constitution as we know it, and possibly no "United States" constitution at all, was the Committee on representation in the Senate or the "second branch" of the legislature. It was this committee that worked out the "Great Compromise" that allowed for equal representation in the Senate while maintaining proportional representation in the House of Representatives.

It was made up of one member from each of the eleven state delegations present at the time, including Elbridge Gerry, Oliver Ellsworth, Robert Yates, William Paterson, Gunning Bedford, Benjamin Franklin, Luther Martin, George Mason, William Davie, John Rutledge and Abraham Baldwin.²⁹

It is well known that no issue divided the Convention like that of representation in the legislature. At the beginning of July, despite objections of small-staters, it was for all intents and purposes settled that representation in the "first branch," or House of Representatives, would be by population. Representation in the Senate posed a bigger problem, however, as small-state delegates were so adamant in their insistence on equal representation in that body, that they threatened to walk out if agreement was not reached. By the second of July, large-state representatives were beginning to sense the inevitable and a compromise promoted by the Connecticut delegation was gaining support. As a result, the committee selected to work out a solution was weighted with those sympathetic to equal representation or compromise.³⁰

The result of this committee's work is also well known. The members returned to the full body with the recommendation that representation remain proportional in the House, that it be equal in the Senate, and that money bills be originated in the House only. Although the report of the committee was made on July 5th, it was not adopted until the 16th. When it was, however, it was adopted virtually intact, though somewhat expanded. To the members of the Committee on Senate representation, therefore, goes much of the credit for bringing the

Philadelphia assembly to a workable solution to the stickiest issue it would confront.³¹

Committee of Style

Although adding nowhere near the substance to the Constitution that did the Committee of Detail, the Committee of Style, consisting of Johnson, Hamilton, King, Madison, and Gouverneur Morris, "produced a masterpiece of draftsmanship" and as such was among the most important in clearing a path for the ultimate acceptability of the Convention's plan. Rossiter says that even less is known about this committee than about the Committee of Detail, but he agrees with most that Morris was the likely protagonist of the group whose hand wrote the final draft of the Constitution. However,

whether Morris seized the initiative or had the job thrust upon him, whether he worked under the gaze of his four colleagues or went at it largely alone, whether the committee kept to itself or accepted help from other delegates--these are questions to which, alas, we have no answers.³²

According to Rossiter, overall the Committee was faithful to the minds that appointed it. Among the twenty or more changes it made to the text, however, twice it actually altered the will of the Convention. In the first of these instances Rossiter says the Committee made its greatest contribution to the Constitution, (albeit unintentionally). Not knowing which states would ratify the final document and which not, they changed the preamble to read "We the people of the United States" in lieu of "We the people of" each state named individually. As a result they strengthened the nationalist position by laying out as the sovereign unit of the new government the collective American people rather than the separate states.³³

The second original contribution this committee made to the substance of the Constitution was its prohibition of the states from interfering with private contracts, eventually accepted and worded in the Convention as disallowing state laws "impairing the obligation of contracts."³⁴

In the end, whether Morris acted alone or not, the Committee of Style took twenty-three articles and condensed them to seven, simultaneously choosing the precise and often exquisitely imprecise language by which the Constitution is known today. As such the contribution of this committee to the overall Constitution was substantial.

Committee of Detail

The Committee of Detail was probably the most important committee in giving shape to the final constitutional document. Christopher and James Collier indicate that when the delegates created the committee on July 24th, they thought they had already outlined the main provisions of the Constitution-to-be and that the committee's task was a simple one of clarifying minor matters and tying up loose ends.³⁵ As it turned out rather, this group of five, in general nationally-minded men, Rutledge, Randolph, Wilson, Ellsworth and Gorham, made major decisions on undecided issues concerning the new government, created provisions where none existed, and, finally, drafted a constitution. In two instances, they actually drafted provisions contrary to the decision of the main body.³⁶

Between the time of its appointment and its report of August 6, while the Convention stood adjourned, the Committee of Detail drew on the resolutions of the Convention, congressional rules, the Pinckney and Paterson plans, state constitutions and the Articles of Confederation, to create a draft constitution three times the length of the resolutions reported from the floor with which they began.³⁷ The most important provisions of this draft were those enumerating congressional powers rather than providing for a general legislative grant. With the adoption of these the anticipated Congress took on the specified authority to tax, regulate interstate and foreign commerce, coin money, borrow, make war, raise armies, build fleets, establish post offices, establish uniform laws for naturalization, establish inferior courts, and call out the militia, among other things. In addition, with likely unforeseen long-term consequences, the Committee provided that Congress should have all powers "necessary and proper" to carry out the enumerated powers.³⁸

Although significant, however, the enumeration of powers was not the sole accomplishment of the Committee of Detail. According to Rossiter, its second most important contribution was in the restrictions it placed on the authority of the states, including among other things denying them the right to "coin money, grant 'letters of marque and reprisal', make treaties, or grant titles of nobility."³⁹

Rossiter and the Colliers agree that another important provision included by the Committee of Detail was that which protected the South's vested economic interests in slavery and which prohibited the taxing of exports. Although subsequently modified in later committees and in the

floor proceedings, the Committee of Detail here initiated the debate on central authority over navigation matters and the "nefarious" slave trade, and in so doing simultaneously created controversy on the floor while providing fodder for further compromise.⁴⁰

Other contributions of the Committee of Detail were substantial.

Says Rossiter, it

provided for the internal organization of both houses of Congress, worked out the exact procedures of the qualified veto, defined the jurisdiction of the courts, adjusted certain relations among the states, and armed the President with powers of guidance (of the legislature), appointment (of his own aides), administration, command, ceremony, and mercy.

In other instances the Committee of Detail "decided to make up the Convention's mind." Where the larger Convention had failed to come to agreement, it proved decisive in its specifications for executive impeachment proceedings, its provisions that new states come into the Union on equal terms with the old, its expansion of the "supremacy clause" to cover state constitutions as well as state laws, and its fixing a ratio for representation in the House of Representatives.⁴²

In the end the importance of the Committee of Detail cannot be ignored. To be sure, lengthy debate in the Convention led to a modification of some of the provisions of that constitution created by these five men, but the matters that they did conclude and the provisions of their written draft were the lifeblood of the remaining debates and proved to be of enormous significance in the creation of the final Constitution.

In summary, the committees selected to accomplish the several charges of the Convention were of varied usefulness in the overall work

of creating the Constitution. Although with few exceptions we do not know which delegates made the most substantial contributions within the committees, the fact that a delegate was a member of a committee is circumstantial evidence that he played a role in accomplishing the purpose of that committee. Again there are known exceptions, but on the whole, a delegate's membership in an important committee is one more indication of his overall contribution to the making of the Constitution.

SYNTHESIS OF MAJOR FIGURES: TOWARD A CONSENSUS OF HISTORIANS

In addition to determining who made the most and the longest speeches in the Convention, and who participated on the most important and greatest number of committees, it will be helpful to note which delegates' contributions over the years have been deemed by historians of the subject to have been of greatest value.

As noted earlier, to analyze afresh which clauses in the Constitution have had the greatest impact on American history and which delegates were responsible for these clauses is neither practicable nor necessary. The object here then is merely to indicate which delegates other historians have granted the leading roles in the Convention.

Of the many historians who have written about the Convention and its influence in American history, very few have been so bold as to actually "rank" them in print. Rossiter, who makes such ratings sound more common than they are, has probably done the most thorough such assessment of all. Madison's biographer, Irving Brant, has also

undertaken a patient and helpful analysis of which framers did the most framing. Charles Warren likewise specifically indicates which delegates he thinks made the most important contributions to the Convention.⁴³ To determine which Convention members other historians seem to think important one must simply note which delegates they choose to focus on and the tenor of their comments about individual participants.

Rossiter groups the delegates under eight headings: "the Principals, the Influentials, the Very Usefuls, the Usefuls, the Visibles, the Ciphers, the Dropouts and Walkouts, and the Inexplicable Disappointments."⁴⁴ The only one he excludes from this list of contributive members that finds himself prominently on the list of others is Alexander Hamilton, who, again, Rossiter considers an "inexplicable disappointment." This assessment seems to be primarily based on the greater contribution Rossiter would have expected of Hamilton in light of his previous and later accomplishments.⁴⁵

Brant's analysis, though in some respects less complete, is more helpful than Rossiter's for the present study in that Brant specifically identifies those delegates whom he believes most helpful "in setting forth principles accepted by the convention," those who originated "principles rejected by the convention," and those most responsible for the "actual construction of the government."⁴⁶ Brant's categories are thus more on point for determining the intellectual contributions of individuals, specifically those resulting from formal higher education.

Those Brant credits with establishing the constitutional principles that were accepted are Madison, Wilson, Franklin, King, Paterson, Randolph and Mason. Those who brought forth principles

largely rejected comprise Luther Martin, again Paterson, Hamilton, Charles Pinckney, Read, Gerry and Gouverneur Morris. Those most responsible for the actual construction of the government he lists as Madison, Wilson, Morris, Sherman, Rutledge, and Charles Pinckney.⁴⁷ In his analysis, Brant states, "Madison and Wilson stand out as the constructive statesmen of the convention. Both had a profound knowledge of public law, drawn from the history of it."⁴⁸

Warren discusses about twenty delegates altogether. He lists separately his "top ten," but does not follow through with as thorough an analysis as Rossiter and Brant. Warren's ten are Madison, Randolph, Franklin, Wilson, G. Morris, King, Rutledge, Charles Pinckney, Ellsworth and Sherman.

Other historians whose writings give some indication about which delegates were of most importance include the Colliers, Charles Meister, Max Farrand, Walter Hastings Lyon and Margaret Horsnell.⁴⁹ In addition to these historians, who have focused on the events of the Convention, writers of general constitutional histories also to some extent indicate who the primary delegates at Philadelphia were. Their more general works, usually covering a large span if not the entire period of American history, are less useful for analyzing in detail the individual contributions of the delegates. Furthermore, the writers of general constitutional histories usually are not specialists on the Convention, so they often rely on other secondary works for their knowledge of the delegates' contributions. Nevertheless, they deserve mention because their necessarily condensed descriptions of the Convention lead them to cite only those delegates who played major roles.

Of three general constitutional histories surveyed, in recounting the history of the Convention all three mentioned Ellsworth, Hamilton, Madison, G. Morris, Wilson, L. Martin, Gerry, Mason and Randolph. Two out of three also mentioned Washington, Johnson, Sherman, Franklin, Charles Pinckney, Gorham, Rutledge and Paterson. Delegates mentioned in only one of these three books include Lansing, Yates, Charles Cotesworth Pinckney, Langdon, Baldwin, Robert Morris, Dickinson, and King. The remaining delegates were not mentioned at all⁵⁰

One cannot with scientific precision come to a consensus of whom historians consider the most important contributors to the Constitution. But the above sampling of specialized and non-specialized studies alike gives a good picture of those delegates who through the years have been generally accepted as having made major contributions. A name count from the above works reveals the delegates most frequently identified as important in these studies. Table 4-5 lists them according to how many of the eleven studies specify or imply them among the most important.

This group compares favorably with the list in Table 4-1 of delegates who spoke the most in the Convention. Of the top seventeen most frequent speakers, only Hugh Williamson and Pierce Butler are not included in this list of those most frequently mentioned by historians (although neither were either of these absent from the rankings of the historians). On the other hand, Hamilton, Paterson, Franklin, Johnson, and Washington on this list are not among the top seventeen most frequent speakers.

Regarding the committee work of those delegates cited by the historians, Ellsworth, Paterson, Charles Pinckney, and Gerry sat on only

one committee. Washington sat on none. Every member of the committees of Style and Detail figures in the historians' assessment.

TABLE 4-5

DELEGATE	STUDIES CITING	DELEGATE	STUDIES CITING
Madison	11	Pinckney, C.	8
Morris, G.	11	Gorham	7
Randolph	11	Johnson	7
Wilson	11	Washington	7
Rutledge	10	Franklin	7
Sherman	10	King	7
Mason	9	Gerry	6
Ellsworth	8	Hamilton	6
Martin L.	8	Pinckney, C.C.	6
Paterson	8	Dickinson	5

SUMMARY

Before the the final analysis of higher education's contribution to the creation of the Constitution, a final justification must be made, based on the data in this chapter, as to which delegates should be singled out for review of their specific contributions to the framing of the document and analysis of their formal higher education experience. Again it is not necessary to base such a justification on strictly scientific data, even if such were possible, because the data as made apparent in this chapter clearly enough separate the major contributors

in the Convention from those who did little, as to minimize the chance of ignoring an important delegate or exaggerating the role of one of little importance. Therefore, in concluding, this chapter will suggest which delegates should be seen as the most important contributors of concepts, ideas, principles and language to the Constitution.

Eighteen delegates constitute the common denominator among the twenty most frequently mentioned by the historians, the twenty-five who served on more than one committee, and either the seventeen most frequent speakers or the seventeen who gave at least one long speech in the Convention. They are Gouverneur Morris, Wilson, Madison, Sherman, Mason, Charles Pinckney, King, Randolph, Rutledge, Gorham, Luther Martin, Dickinson, Gerry, Hamilton, Franklin, Paterson, Ellsworth and Charles Cotesworth Pinckney. Only Johnson and Washington, among those on the historians' list, did not make any long speeches or speak the same number or more times than did the lowest of the top seventeen most frequent speakers. Washington is a special case, and although his unique contribution to the Convention was essential to its success, he is rightly excluded from the list of those who added ideas and principles to the Constitution or formulated its language. William Samuel Johnson, on the other hand, though not making the top seventeen most frequent speakers, did speak twenty-two times, making him overall the twenty-fourth most frequent speaker, and on occasion he did speak at length, although always short of the arbitrary one page of Madison's notes selected here as a cut-off for long speeches. In addition Johnson served on four committees, including chairing the all-important Committee of Style, and he was mentioned seven times by the historians.

of the Convention cited above. Finally, Rossiter gives him a "very useful" rating as "the least talkative but by no means least persuasive member of the Connecticut delegation, who may have had more do to with the success of the committee of style than we think". It stretches nothing therefore to place Johnson among the nineteen or twenty top contributors to the Constitution.⁵¹

Of these men thus deemed to have given the most to the formation of the U.S. Constitution, fourteen were formally educated at a college, university, the Inns of Court or at a combination of these. They are James Madison, James Wilson, Gouverneur Morris, Rufus King, Edmund Randolph, Oliver Ellsworth, John Rutledge, Luther Martin, John Dickinson, William Paterson, Charles Cotesworth Pinckney, Elbridge Gerry, William Samuel Johnson and Alexander Hamilton (although the onset of the Revolution prevented Hamilton from graduating). It was through these men that eighteenth-century higher education made its most direct contribution to the Constitution, especially as it "politicized" and "republicanized" the political theorists among them. It is to the specific contributions to the Constitution of these fourteen delegates that we now turn.

NOTES

1. Oliver Ellsworth Wood to George Bancroft, quoting Oliver Ellsworth, Jr., in Max Farrand, Records of the Federal Convention of 1787, vol. 3 (New Haven: Yale University Press, 1966), 396.

2. Clinton Rossiter, for example, who has done the most thorough analysis of the delegates' contributions to the Convention, gives Hamilton a negative rating, calling him an "inexplicable disappointment." Rossiter, 1787: The Grand Convention (New York: W.W. Norton & Co., 1987), 252.

3. Charles Warren, The Making of the Constitution (Boston: Little, Brown and Company, 1928), 125; Robert G. Ferris and James H. Charleton, The Signers of the Constitution (Flagstaff, Arizona: Interpretive Publications, 1986), 196, 223; Catherine Drinker Bowen, Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787 (Boston: Little, Brown and Company, 1966), 93.

4. It appears Bowen and Ferris and Charleton borrowed their figures from Warren. Regardless, these writers consistently come up with smaller figures for the number of speeches of various delegates than do I in this study, indicating they must have not counted motions and seconds and perhaps not shorter comments as speeches. Again they do not explain how they arrived at the few figures they offer.

5. Charles Page Smith, James Wilson: Founding Father 1742-1798 (Chapel Hill, N.C.: University of North Carolina Press, 1956), 217; Geoffrey Seed, James Wilson (Millwood, N.Y.: KTO Press, 1978), 42.

6. The cut-off of one page for a long speech is admittedly somewhat arbitrary, but not entirely unuseful as a gauge. In the Hunt-Scott edition Hamilton's full-day speech, which according to Rossiter actually lasted four or five hours (178), takes up eight and a half pages, including the text of his plan for a constitution. Martin's three-hour speech takes up only a page and a half but Madison's lack of enthusiasm for it seems to come through. See James Madison, Debates in the Federal Convention of 1787, eds. Gaillard Hunt and James Brown Scott (Buffalo, N.Y.: Prometheus Books, 1987), 111-120, 174-175. Records left by other delegates, including Robert Yates and John Lansing, have not been used in this analysis because their incompleteness does not allow comparison from one source of all the speeches of the Convention as does Madison's record.

7. To the extent known the particular work done in a given committee by some of the delegates is discussed in the following chapter. Records of the Convention do not record in detail the manner in which committee members were selected. In some instances committees are spoken of as being "appointed"; in others selected by "ballot." Because the Convention largely adopted the rules of Congress, it is

presumed, absent contrary evidence, that the smaller committees were chosen by polling the delegations. The grand committees were likely created by each delegation selecting one of its members to serve.

8. Seventeen is the number of those who made near fifty speeches or above, there occurring the last major break in sequence between Charles Cotesworth Pinckney (number seventeen) with forty-six speeches and Daniel Carroll with thirty-four. No more than four speeches separate any of the delegates after Carroll.

9. The others of the seventeen most frequent speakers already mentioned were King, Williamson, Rutledge, Sherman, Gerry and Charles Pinckney.

10. Washington, in a class by himself, served on no committee, the reasons for which, considering the political delicacy of his position, are easily enough ascertainable.

11. Madison, 558.

12. Madison, 421.

13. Madison, 435, 451-55, 457, 466, 630, 631.

14. Madison, 470, 476, 501-502.

15. Madison, 482-483, 502-504.

16. Rossiter, 166-68; see also Madison, 18-21.

17. Madison, 502; Rossiter, 218.

18. Rossiter, 219.

19. Ibid.

20. Madison, 502-538 *passim*; Rossiter, 218-221.

21. Rossiter, 216; for the text of the debate, see Madison, 438-447.

22. Rossiter, 218.

23. Christopher Collier and James Lincoln Collier, Decision in Philadelphia (New York: Balantine Books, 1986), 223-225.

24. Collier, 225.

25. Collier, 227-232.

26. Madison, 459-460; Collier, 233; Rossiter, 217.

27. Rossiter, 188; see also Madison, 215, 223; Collier, 200-201.

28. Madison, 226, 237-39, 246; Collier, 201-203; Rossiter, 188-189. The members of the second committee were David Brearly, Daniel Carroll, William Houstoun, Rufus King, James Madison, Gouverneur Morris, George Read, John Rutledge, Roger Sherman, Hugh Williamson, and Robert Yates.

29. Madison, 205. As noted above, Ellsworth, taken ill, was replaced by Sherman; see Rossiter, 187.

30. Rossiter, 186-187; Collier, 172-174.

31. Madison, 259-260; Rossiter, 189; Collier, 175, 177-178.

32. Rossiter, 224-225; quotation is on 225; see also Madison, 538, 545-54, 559 and Collier, 337-40.

33. Rossiter, 228-229.

34. Rossiter, 230.

35. Collier, 226, 252.

36. These two instances were in the provision that members of both houses be paid by the states and in enumerating special, rather than granting general congressional powers. Rossiter apparently overlooks the latter as an act contrary to the previously expressed desire of the delegates, referring to only "one instance in which the committee had acted contrary to the declared will of the Convention." The Colliers rightly point out, however, that twice the Convention had voted on and rejected an enumeration of legislative powers. They indicate that, regardless, the Committee probably correctly sensed that the Convention would not reject an enumeration over a general grant of power, because of the strong fears known to exist of such a general power among the delegates. They further suggest the Committee members themselves preferred an enumeration, so included it with a "let's try it and see what happens" attitude. Rossiter, 207; Collier, 252.

37. Rossiter, 201, 206-207.

38. Collier, 252-258; Rossiter, 208, 209.

39. Rossiter, 209.

40. Rossiter, 209-210; Collier, 227-240.

41. Rossiter, 207-208. These executive powers included the ability of the president to recommend legislation, report on the state of the union, convene emergency sessions of the legislature, adjourn it if both houses could not agree on an adjournment time, act as

commander-in-chief of the armed forces, and conduct important aspects of foreign affairs and diplomacy; Collier, 306-307.

42. Rossiter, 208; Collier, 268.

43. See Rossiter, 247-253; Irving Brant, James Madison: Father of the Constitution 1787-1800 (Indianapolis: The Bobbs-Merrill Company, 1950), 154-160; Warren, 57.

44. The Principals through the Usefuls are as follows:
Principals--Madison, Wilson, Washington, G. Morris.
Influentials--Rutledge, Franklin, Sherman, Charles Pinckney, King, Charles Cotesworth Pinckney, Ellsworth, Gorham, Mason, Randolph, Gerry.
Very Usefuls--Dickinson, Williamson, Johnson, Read, Butler, Paterson, Luther Martin. Usefuls--Brearly, Livingston, Spaight, Bedford, Baldwin, Carroll, Langdon, Davie; Rossiter, 247.

45. In fact, in another work, specifically devoted to Hamilton and the Constitution, Rossiter lists the outstanding members of the Convention as Madison, Wilson, Morris, Sherman, Rutledge, Ellsworth, King, Franklin and Washington; Rossiter, Alexander Hamilton and the Constitution (New York: Harcourt, Brace & World, 1964), 49.

46. Brant, 156. Brant stresses that, in evaluating the major contributors to the Constitution, one must give the credit to groups rather than individuals.

47. In addition Brant credits Franklin, Ellsworth, Sherman and Morris with leading the effort for effective compromise. These however would seem to owe this aspect of their contribution more to a pragmatic and diplomatic bent than to any particular intellectual training; Brant, 156.

48. Ibid.

49. Many historians indicate who they esteem the most important men at the Convention simply by whom they choose to write about. The Colliers do not "rank" the delegates but devote entire or near entire chapters individually to Washington, Madison, Hamilton, Charles Pinckney, Paterson, Sherman, Luther Martin, Wilson, Gerry and Mason. They also discuss in some detail the roles of G. Morris, Ellsworth, Franklin, Johnson, King, Charles Cotesworth Pinckney, Randolph, Rutledge, and, to a lesser extent, Dickinson. Meister's book devotes each of thirteen chapters to a different member of the Convention, including Ellsworth, Franklin, Gorham, Hamilton, Madison, Mason, G. Morris, Charles Cotesworth Pinckney, Randolph, Rutledge, Sherman, Washington and Wilson. Max Farrand emphasizes the roles of Madison, Hamilton, Wilson, Washington, G. Morris, Charles Pinckney, Charles Cotesworth Pinckney, King, Rutledge, Gorham, Randolph, Mason, Paterson, Dickinson, Gerry, L. Martin, Ellsworth, Johnson, and Sherman. Hastings

Lyon follows a narrative account of the Convention with an epilogue devoted to the subsequent careers of a number of delegates whom he apparently presumes important, but does not include in this section Washington (perhaps assuming he is well enough known), Mason, King, Franklin or Hamilton. He does include Sherman, Gorham, Wilson, Rutledge, Robert and Gouverneur Morris, Wythe, Paterson, Ellsworth, Dickinson, Randolph, Gerry, Johnson, Charles and Charles Cotesworth Pinckney, Butler, Madison and Luther Martin. Horsnell includes Washington, Randolph, Sherman, Rutledge, Wilson, G. Morris, Mason, L. Martin, Paterson, Johnson and Madison; Collier, Decision in Philadelphia; Charles W. Meister, The Founding Fathers (Jefferson, N.C.: Mcfarland & Company, 1987); Max Farrand, The Framing of the Constitution of the United States (New Haven: Yale University Press, 1913); Walter Hastings Lyon, The Constitution and the Men Who Made It: The Story of the Constitutional Convention 1787 (New York: Houghton Mifflin Company, 1936); Horsnell, "Who Was Who in the Constitutional Convention: A Pictorial Essay of Its Leading Figures," This Constitution 15 (Summer 1987), 37-41.

50. Edward Dumbauld, The Constitution of the United States (Norman, Oklahoma: University of Oklahoma Press, 1964), 38-58; Alfred H. Kelly and Winfred A. Harbison, The American Constitution: Its Origins and Development 3d ed. (New York: W.W. Norton & Company, 1963), 114-147; Broadus Mitchell, A Biography of the Constitution of the United States: Its Origin, Formation, Adoption, Interpretation 2d ed. (New York: Oxford University Press, 1975), 20-128.

51. Rossiter, Grand Convention, 251. All delegates rated by Rossiter above "very useful," and three of the seven "very usefuls" fall within the common denominator of eighteen delegates. Beside Johnson, the "very usefuls" missing from this group are Butler, Read and Hugh Williamson but none of these three was singled out by other historians to the degree that Johnson was. Butler comes up on only one other list and Read on none, although they ranked respectively fourteenth and twentieth among the most frequent speakers and served on two, though relatively minor, committees each. The most conspicuous absence from the "consensus" of historians, however, is doubtless Williamson who, as the most active delegate from North Carolina, ranked tenth in number of speeches given from the floor and sat on five committees. In the eleven studies cited, however, only Rossiter mentions him at all among those most contributive to the success of the Convention.

CHAPTER V

THE MEN, PART II: CONTRIBUTIONS OF THE FORMALLY EDUCATED TO THE CONSTITUTION

Patterson . . . is a Classic, a Lawyer, and an Orator. . . . Wilson . . . is well acquainted with Man. . . . Government seems to have been his peculiar Study, all the political institutions of the World he knows in detail. . . . Dickinson . . . is a Scholar, and said to be a Man of very extensive information. . . . Maddison . . . blends together the profound politician, with the Scholar. . . . he always comes forward the best informed Man of any point in debate.

--William Pierce, "Character Sketches of Delegates to the Federal Convention"

The fourteen delegates with formal higher educations among the men who contributed most to the making of the Constitution included four graduates from the College of New Jersey (Princeton), four who received their formal educations in Great Britain, two from King's College (Columbia), two from Harvard, and one each from William and Mary and Yale. As will be seen, the particular guise of their individual contributions ranges from the theoretical to the practical and there is no suggestion here that a formal education had made philosophers of them all. Nor is it implied that they operated in any degree more than their informally educated colleagues from motives of civic virtue or less from political expediency. But although not all of the college educated (to

include members of the Inns of Court) were articulate champions of republican theory, those delegates who had a formal higher educational background were the main political philosophers of the Convention.

But the objective here is not to suggest that one had to be formally educated to contribute to the Constitution, but rather to ask what contribution those with higher education actually made. The answer, as will soon be apparent, is that this contribution was substantial, indeed. A resume of the individual contributions of each of the fourteen higher-educated among the "real" framers thus follows.

WILLIAM AND MARY; YALE: THE GOVERNOR AND THE COLLEGE PRESIDENT
Edmund Randolph

The only graduate of Thomas Jefferson's alma mater, among the delegates who actually created the Constitution, was the Virginian, Edmund Randolph. As state governor, the William and Mary alumnus was the organizer and ostensible head of the Virginia delegation. Arriving in Philadelphia ten days before the actual opening of the Convention, he actively participated with the other members of his delegation in preparing the "large state" or Virginia Plan which would become the basis for the ensuing debates.²

According to Madison's record, "Mr. Randolph . . . opened the main business" of the Philadelphia Convention, calling for a revision of the "federal system." In so doing he declared, "we ought to inquire 1. into the properties, which such a government ought to possess, 2. the defects of the Confederation, 3. the danger of our situation, and 4. the remedy." He then proceeded to expound on each of these four points,

proposing a remedy in the form of a central plan of government, the "Virginia Plan," with fifteen resolutions, mostly the products of Madison's mind. He ended on a note encouraging the delegates to act immediately, "not to suffer the present opportunity of establishing general peace, harmony, happiness and liberty in the U.S. to pass away unimproved." Emphasizing the contribution this speech made to the direction of the Convention, John Reardon, Randolph's biographer, writes: "If Madison's ideas fell on fertile ground, Randolph did a convincing job of sowing them in his opening speech."³

It is an apparent irony that the man who initiated the debates by proposing a national plan with far-reaching consequences would be one of only three present on the closing day who would refuse to put his name to the fruits of his and his colleagues' labors. The irony becomes less so, however, with the knowledge that most of the ideas Randolph put forth in his beginning speeches, and particularly their national thrust, were born of Madison. According to Reardon, in the first few weeks following his laying out the Virginia plan, "Randolph played a relatively minor role in the discussions. . . . There were occasions, however, when he found it necessary to reassure one or another of the delegates that the Virginia Plan did not, in fact, seek to destroy the power of the states."⁴

That Randolph's contributions to the proceedings were not limited to his opening speech is confirmed by the records of the debates. Only eight delegates spoke more frequently in the Convention than he did. As the weeks passed he assumed more and more an active part, taking issue with or defending various plans and proposals, sometimes siding with the

more nationally oriented, sometimes with the protectors of state interests. Randolph was the first Virginian to defend the Virginia plan against the New Jersey plan, proclaiming that the issue amounted to whether they would choose a federal or national government and that a federal had already shown itself inadequate to the task.⁵

But according to Reardon, Governor Randolph was against the national government's encroachment on state authority as much as he was the reverse. The debates bear this out. He worked hard for a plural executive, viewing James Wilson's motion for a single executive as conceiving the "foetus of monarchy." He worried considerably about the "excesses of democracy" and was outspokenly hostile towards or suspicious of the "people."⁶

An additional Randolph contribution included his backing Benjamin Franklin's recommendation for prayers before each session by suggesting as a practical way to undertake it--inviting a local clergyman to give the Convention an Independence Day sermon and then simply retaining his services for the remainder of the Convention to begin prayers.⁷

Randolph was named to the first committee to determine the proportion of representation in the House of Representatives. Neither he nor the Convention at large was satisfied with the report of this committee of five, however, particularly the provision that the House would make its own determinations, over time, as to the expansion of its numbers. Following a proposal by Randolph that a periodic census be added to provisions of the report of the previous committee of five, a second committee of eleven on representation in the House met and reported the next day. As previously seen, however, before the question

of representation was finally resolved, it became entangled in the slavery issue. Randolph helped suggest the wording of the three-fifths compromise for counting slaves for purposes of taxation and representation.⁸

During the course of heated discussion over perhaps the main issue of the Convention, that of equal or proportional representation in the Senate, Randolph became irritated with the demands of the small states. Consequently, he drew up a compromise which would allow the small states an equal vote on some issues and make more than a majority necessary to pass others, but still retain otherwise proportional representation. The "Great Compromise" was passed before he got a chance to present these ideas, so he merely mentioned in passing to the delegates that he had written them up and then recommended the adjournment on which he was confronted by William Paterson. But when the matter was finally settled, the adopted compromise did not rest well with the Virginia governor. From this point on he became more blatantly in favor of limiting the power of the central government, arguing unsuccessfully for limiting the executive to one term and for him to be chosen by the national legislature.⁹

Randolph was chosen as a member of the Committee of Detail, one of the most important committees to come out of the Convention. Reardon speculates that the Virginian was not eminently well qualified for this committee, but that he may have been chosen for his extensive legal knowledge or the assumption of the Convention members that he was one of prime authors of the Virginia plan. In any event he was assigned or assumed the responsibility of writing the first draft of the

Constitution. According to Reardon, "the result of his efforts was a series of notes on what constituted the appropriate format for a constitution as well as sketches or outlines of each of the major sections that would appear in the document." Laying down his prescription for a good constitution, he rather presumptuously advised his colleagues on the committee:

1. To insert essential principles only, lest the operations of government should be clogged by rendering those provisions permanent and unalterable, which ought to be accommodated to times and events, and
2. To use simple and precise language, and general propositions, according to the example of the several constitutions of the several states.¹⁰

Randolph also stressed to his fellow committee members the importance of a preamble. In addition he included elaborate procedures to prevent Senators from determining their own salaries, but these procedures did not survive the committee. He included a provision requiring a two-thirds vote of both houses for the passage of navigation acts, which, though eventually debated in the Convention, was ultimately removed from the final document, despite Randolph's strong disapproval. Randolph's draft made the executive impeachable by the House; the Convention changed it to make him impeachable by the Senate. In the end Randolph's draft was revised by his fellow committee members, once by John Rutledge and then several times by James Wilson, but some of Randolph's "ideas found their way into the draft constitution that became the report of this committee."¹¹

Following the Committee of Detail report, Randolph moved to have reinstated the provision that money bills must originate in the House.

The section was stricken and then reincluded a month later, but it was not in time to salvage his support, says Reardon, for "by then Randolph's attitude toward the whole proceedings had undergone a marked change." Randolph's commitment to a national government began to wane as he began to believe the small states were taking advantage of the large. He found distasteful the compromises made by the large states, although, according to Reardon, he had never been "outside the spirit of compromise" in the Convention. By the middle of August Randolph was generally hostile to the plan.¹²

On September 10, a week before final adjournment, Randolph offered an amendment to the proposals before the Convention on ratification procedures, during the course of which he unleashed a torrent of criticism on the document's provisions as they then stood. According to Reardon, the delegates were stunned--"This was the most detailed criticism of the draft constitution yet made by a member of the Convention." Although his objections were not met entirely without sympathy and Franklin seconded his immediate motion for a change in the ratification procedures, there was by this time little that could be considered in Randolph's objections before at least the recently appointed Committee of Style had reported. Following the Committee's report, however, Randolph again voiced hope for a change in the method of ratification and suggested he would otherwise not be signing. Following further debate, Randolph's proposition was unanimously voted down.¹³

Randolph spoke for the final time on the last day of the Convention to say he would not sign the Constitution, but that he would

not necessarily oppose it outside the Convention either. Reardon suggests the delegates suspected Randolph of being politically clever, leaving his options open, until he caught the drift of the Virginia political winds. His pessimism evidently dispersed as he travelled home and found people generally in favor of the plan. In the end he supported ratification. He fought off Patrick Henry in the state ratifying convention and countered George Mason's aspersions that he was inconsistent with what may sum up his attitude concisely: "'I repeat it again, though I do not reverence the Constitution, that its adoption is necessary to avoid the storm which is hanging over America, and that no greater curse can befall her than the dissolution of the political connection between the states.'"¹⁴

William Samuel Johnson

The only Yale graduate among the most contributing delegates was the newly appointed president of King's College, William Samuel Johnson. As one of the older of Jefferson's "demigods" assembled in Philadelphia, he would take his place with Franklin, Dickinson and Sherman, according to Elizabeth McCaughey, as one of the "mediators and practical statesmen" of the Convention. "The least talkative but by no means least persuasive member of the Connecticut delegation," says Rossiter: it was perhaps in supporting the compromises recommended by his delegation that he was most effective.¹⁵

Although, like his fellow delegates from Connecticut, Johnson was not an unequivocal nationalist, the Convention members as a whole esteemed him a "national statesman." He knew at least fourteen of them already and had served with ten in Congress. Madison, Wilson and Pierce

all spoke highly of him: Madison called him "a highly respectable member" of the Convention. Pierce said he "possesses the manners of a Gentleman, and engages the Hearts of Men by the sweetness of his temper, and that affectionate style of address with which he accosts his acquaintance." In addition, he was "much celebrated for his legal knowledge; . . . said to be one of the first classics [sic] in America, and certainly possesses a very strong and enlightened understanding." According to one biographer, he was a born conciliator and compromiser.¹⁶

Although he had taken his seat on June 2, Johnson did not make his first speech before the Convention until June 21--during which he encouraged an equal vote for each state in the Senate to preserve the "individuality" of the states. By June 29, he was strongly urging compromise. "The controversy must be endless whilst Gentlemen differ in the grounds of their arguments," he asserted. Clarifying the existence of states as political societies, he pronounced "that in one branch the people, ought to be represented; in the other the States." Following the Convention's adoption of the proportional suffrage rule for the House of Representatives, Johnson and Ellsworth failed in their first attempt to implement equal representation in the Senate. According to his biographers, however, in addition to his speeches from the floor, Johnson worked actively behind the scenes, at one with the other Connecticut delegates, Sherman and Ellsworth, in bringing to fruition the Great, often referred to as "Connecticut," Compromise.¹⁷

In addition to an important role in settling the Senate representation issue, Johnson played a significant part in reconciling

the North and South on the slave trade and navigation acts. "Probably the most influential member" from New England on the slavery-navigation act committee, says Groce, Southerners saw him as "friendly, tolerant, Episcopalian and generally beloved." A slaveholder himself, Johnson was possibly the key figure on this committee who, again, made compromise the most acceptable solution among the sectional interests.¹⁸

In addition to Johnson's sitting on four committees in the Convention, two of which were of the utmost importance, Groce points to other aspects of the Connecticut delegate's contribution to the Convention, all of which show him to have been a moderate, but firm supporter of national sovereignty. Among other things he appeared to favor a Congressional power of taxation, assumption by the national government of the state debts, and to oppose the issuance of unsecured paper money and the impairment by the states of private contracts. In addition he likely made a definite impact on the national judiciary: he objected to excessive restrictions on the executive and the legislature, but lauded execution of the laws by the judicial branch. He moved to extend the jurisdiction of federal courts to cases in law and equity, seconded John Rutledge's motion for national Supreme Court jurisdiction over interstate disputes, and, according to Horsnell, came the closest that the Convention came, in explicitly implementing judicial review, by his successful motion that the judicial power be extended "to all cases arising under this Constitution" as well as to laws passed by Congress.¹⁹

Johnson's final major contribution to the Convention was as chairman of the Committee of Style. Although historians generally

accept Madison's assertion that it was Gouverneur Morris who essentially penned the final document, no one knows to what extent the other members of the committee were involved. Johnson's selection as chairman certainly seems to indicate the degree to which his wisdom, legal expertise, or writing abilities were esteemed by his colleagues.

Rossiter asserts that Johnson "may have had more to do with the success of the committee of style than we think."²⁰

How to sum up Johnson's contribution? According to Groce, "he should best be remembered as the spokesman of compromise within a heated and discordant convention." If for nothing else, perhaps he should be remembered, in Rossiter's words, for having "set some sort of record . . . for talking only about important things."²¹ In the end, however, many questions of Johnson's contribution to the Constitution will never be answered. The fact that he spoke less often than his more famous fellow delegates perhaps has robbed him of a more elevated standing in history. Notwithstanding, he was an active member of the team, who scholars must not relegate with the majority of his colleagues to the sidelines of the Convention.

COLUMBIANS AND HARVARDIANS

Gouverneur Morris

It was a rather reluctant Gouverneur Morris who accepted his membership on the Pennsylvania delegation to the Federal Convention of 1787. Originally a New Yorker and a partisan conservative who had expressed his unavailability to serve, he was elected with the fewest

votes of any of the Pennsylvania delegates. Shortly thereafter, he wrote to Henry Knox that he would have refused the appointment had the object of the Convention been any different than it was.²²

But once reconciled to his appointment, the King's College graduate attended and participated in the Convention with anything but half-heartedness. By the conclusion of the summer, despite nearly a month's absence from the Convention, he had spoken by some measure more times than any other delegate, frequently in long speeches; had sat on four important committees, and, in the end, was the penman of the constitutional document itself.

According to Max Mintz, "to Morris the convention represented the hope of realizing the centralized American union he had been working for throughout the Revolution." As an homme d'affaires and landholder, he desired a government with a "laissez-faire" policy that would simultaneously protect private property and defend individual liberties. He distrusted popular but opposed monarchical government as contrary to the temperament of the American people. Says Mintz,

the form of government, he believed, must depend upon established institutions and the political maturity of the people. That idea was implicit in his thinking from the beginning. It was a fundamental tenet of Steuart's Inquiry into the Principles of Political Economy, which Morris had read at least as early as 1781.²³

While waiting for a quorum to arrive in Philadelphia, Morris actively promoted among the delegates present an agreement for a greater number of votes in the Convention for the larger states. The Virginians, however, refused to go along, thinking political expediency required that they induce the small states to voluntarily relinquish equal representation during the Convention itself. The question

portended Morris' position during the debates, however, and on the floor he spoke out consistently against equal suffrage, at one point going so far as to suggest, albeit graciously, that he would rather see the small state Delaware leave the Convention, than retain equal suffrage under the new government. He opposed the "Great Compromise" that eventually came out of committee, even moving for its entire reconsideration the day following its adoption.²⁴

Morris was equally active in efforts to arrive at a satisfactory system of representation for the House. A member of both committees on representation for this body, he argued that property as well as population should be the basis of its representation. But in so arguing he opposed that slaves be considered as inhabitants for representation purposes. He was adamant against slavery. "Whatever the limitations of his own prejudices," says biographer Howard Swiggett, "there is no question of the consuming moral hatred he felt for slavery." Thus Morris led the successful drive against the southern states that resulted in the three-fifths compromise.²⁵

For all the delegate's other accomplishments, Mintz suggests that "unquestionably the most penetrating and enduring contribution which Morris made during the convention was in the deliberations on the formation of the executive." Wilson had laid the foundation for the presidency during the days of Morris' absence, but the only component of his plan that had been adopted was the provision that the executive consist of a single person. When Morris returned, he picked up the pieces of Wilson's plan, argued for them and expanded them, until Wilson

himself rejected them. But Morris then settled in the spirit of compromise for the provisions ultimately adopted.²⁶

For example, on the grounds that it would make faction impossible and ensure the election of a nationally-known figure, Morris moved for the popular election of the president. When defeated nine to one, he modified his proposal to call for election by electors. That proposal too was initially, but not ultimately, defeated. Morris also opposed the ineligibility of the president to serve a second term--in fact, if he had had his way the executive would serve "during good behavior." However, when it was obvious that such an extended "term" would not sit well with the delegates, he proposed that shorter terms be adopted with no prohibitions against reelection.

Morris also came around to accepting limited impeachment provisions for the president, which he had initially opposed, and argued for an absolute executive veto of legislation, with a three-fourths vote to overrule contingency. Morris also recommended that the president serve with a "council of state," essentially a cabinet, which though modified from the form he proposed, in some degree came to fruition.²⁷

When the committee for postponed matters deliberated, Morris was a member. Mintz says Morris' presenting on the Convention floor the committee's provisions for the presidency indicates he authored that section. As such, he recommended, among other things, a single executive serving a four-year term with no restraints on reelection, to be elected by an electoral college, or, in the case of the failure of a majority, to be elected by the Senate--which was changed on the floor to the House of Representatives.²⁸

In addition to his work in outlining the office of the executive under the Constitution, Morris merits distinction as the man primarily responsible for the document's final form. Only James Wilson is a possible contender to share this honor. In a well-known letter written to Jared Sparks in 1831, Madison said, "the finish given to the style and arrangement of the Constitution fairly belongs to the pen of Mr. Morris; the task having, probably, been handed over to him by the chairman of the Committee." Morris himself wrote Timothy Pickering that the Constitution "was written by the fingers, which write this letter." According to Mintz the Constitution bears "the clear marks of Morris' gift for precision, vigor, and grace of expression. . . . [and] represents the best of eighteenth-century literary style."²⁹

Gouverneur Morris, then, had no small impact on the events of the Constitutional Convention, however varied his contributions. The assessments have followed accordingly. The remainder of his formidable career, says Mintz, was "never to match his moment of greatness as molder of the presidency and stylist of the Constitution."³⁰

Brant notes that Morris was one of the six leaders in the Convention "in actual construction of the government," but also lists him as one of those whose principles were often rejected by his fellow delegates. In addition, he "loved political manipulation," says Madison's biographer.³¹

Rossiter says although Morris' reputation for cynicism, cleverness and fickleness will always make his contribution "slightly suspect," that anyone who has studied the Convention,

noting the frankness and superb timing of his important speeches, watching him shoulder most of the burden of committee work for his fellow Pennsylvanians, reading over his final draft of September 12--must recognize a magnificent contribution.

He continues,

since the contribution was also quite unexpected, he stands out as the Framer whose reputation received the largest boost in this period. And if he had done nothing else, he would have earned our gratitude for making the Convention chuckle, and also think, with his pointed jokes about overhospitable Indians, hypocritical ³²slavers. . . and restless Vice Presidents.

Thus Gouverneur Morris is a man to be reckoned with. Although anyone who spoke as much as he did in the Convention could not expect his every input to be adopted, his contributions in shaping the executive and giving the document its final form were such as to set him apart among the leaders of the Convention.

Alexander Hamilton

One of the great ironies in the coming forth of the Constitution is the relatively small part played in the Federal Convention by Alexander Hamilton--the New York delegate who had had such a crucial role in organizing and promoting the Convention and whose pen would prove so puissant during the ratification process. "Hamilton had a far less creative hand in that event than one would have expected of the eager young nationalist," says Clinton Rossiter, who calls his performance at the Convention "disappointing." Two dominant factors account for Hamilton's ineffectiveness: the state pride and provincialism of his fellow New Yorkers and his own uncompromising veneration of the British governmental system.³³

Unquestionably Hamilton's high ambitions at the Convention were thwarted in great part by the insular local-mindedness of the other

members of the New York delegation, John Lansing, Jr. and Robert Yates. According to James and Christopher Collier these men "were convinced that their state might be better off outside of any national scheme and were not keen to see the Convention succeed." Says Rossiter, Hamilton, "the most continental-minded of all delegates at the Convention, was a member of the most state-minded of all delegations." The result was that Hamilton found himself generally at odds with his delegation, frequently splitting the New York vote, with the future Federalist on the losing side. Consequently, the frustrated Hamilton left the Convention on June 30, not to return until after Yates and Lansing had themselves departed.³⁴

During the period that Hamilton did attend the Convention, he is best known for the plan of government that he submitted during the days of intransigence among the delegates over the Virginia and New Jersey plans. According to Madison, Hamilton, "who had been hitherto silent on the business before the Convention, partly from respect to others whose superior abilities age and experience rendered him unwilling to bring forward ideas dissimilar to theirs, and partly from his delicate situation with respect to his own State," felt "obliged . . . to declare himself unfriendly to both plans . . . particularly that of N. Jersey."³⁵

The young delegate therefore presented his own alternative plan and in doing so revealed his unmitigated admiration of things British. According to Madison's report, in Hamilton's "private opinion he had no scruple in declaring, supported as he was by the opinions of so many of the wise and good, that the British Government was the best in the

world: and that he doubted much whether any thing short of it would do in America." Thus modeled after the British constitution, his scheme included provisions for an aristocratic senate and an elected monarch, all serving for life. The British "house of Lords is a most noble institution," he professed, and as for the executive, "the English model was the only good one on this subject."³⁶

For more than five hours, Hamilton addressed the assembly, promoting what Rossiter calls "a hard-grained amalgam of Hume, Locke, and Hobbes." But the reaction to his plan was uninspiring--there practically was none. George Read alone among the delegates seems to have favored the New Yorker's program. Perhaps "so many" of Hamilton's "good and wise," enamored of the British Government, were not numbered among the delegates. More likely, however, other Convention members were sympathetic with Hamilton's principles but found their application impracticable. Some two weeks earlier, John Dickinson had said that a limited monarchy was "one of the best Governments in the world," but that in America it was "out of the question. The spirit of the times--the state of our affairs, forbade the experiment, if it were desireable." On June 7, Wilson had observed, "the British Government cannot be our model. We have no materials for a similar one. Our manners, our laws, the abolition of entails and of primogeniture, the whole genius of the people, are opposed to it."³⁷

In fairness, Hamilton was not advocating the curtailment of individual liberties and there were democratic aspects of his plan. But his system, so closely resembling that of the British, could find no takers among men who had so recently rid themselves of a king. Thus if

Hamilton appears brash or presumptuous in this incident, perhaps it is for his failure to better read the political sentiments of his fellow delegates. "Alexander Hamilton," say the Colliers, "chose at Philadelphia to throw away his influence by presenting a plan that nobody could support, and not too long after, by simply leaving the Convention altogether."³⁸

Hamilton's inability to carry his delegation and to secure the adoption of his plan should not be allowed to obscure the genuine contributions he did make to the Convention, however. He exerted his influence from the beginning as a member of the rules committee that would in large part establish the parameters of the debates to come. In addition, he promoted the idea of a lower house directly elected by the people, spoke against payment of members of Congress by the state legislatures and opposed their eligibility to appointed offices during their elected term, spoke on the method of presidential elections and on the number of seats in the House, advocated a simple constitutional amendment process, and at the conclusion of the Convention, gave a short, sincere speech, in a spirit of self-sacrifice, to encourage all the delegates to sign. According to Madison's records, Hamilton expressed that "no man's ideas were more remote from the plan than his were known to be; but is it possible to deliberate between anarchy and Convulsion on one side, and the chance of good to be expected from the plan on the other[?]"³⁹

All in all, Hamilton spoke twenty-nine times from the Convention floor, including perhaps the longest of all the delegates' speeches among three long speeches that he gave. For the relatively short time

that he was present, he spoke disproportionately much. And in addition to speaking for or against specific constitutional provisions, he provided grist for the debate mill by tendering speeches laden with historical examples and political theory. Furthermore, he was elected to the Committee of Style, among the most important of the committees, which, although his part in drafting the final constitution is unknown, at least reveals a continued confidence in Hamilton on the part of the other delegates.

So Hamilton was a visible, active, contributing member of the Convention. Nevertheless, observers of the debates generally sustain Rossiter's point that the subject of his monograph was an "inexplicable disappointment" overall. Biographer Stuart Brown, for instance, though sympathetic with the young New York delegate, agrees that "Hamilton's great service to the Constitution . . . was to come after it had been drafted, not during the days of deliberation." Ferris and Charleton say "he played a surprisingly small part in the debates" and add to the reasons already given that legal business took him away for a good deal of the Convention. More telling even than the assessments of historians, however, are the appraisals of Hamilton's fellow delegates: William Samuel Johnson remarked that Hamilton and his plan were "praised by every gentleman, but supported by no gentleman." And Gouverneur Morris, the Convention's other King's College alumnus, noted that "General Hamilton had little share in forming the Constitution. He disliked it, believing all Republican government to be radically defective."⁴⁰

In short, Hamilton's contributions during the Convention should not go unnoticed; his ideas were useful overall and in general attracted much attention at the time they were proffered. His Convention contributions are, however, in the end obscured by the magnitude of his post-Convention contributions to the Constitution's ratification.

Rufus King

At age thirty-two, the Harvard graduate Rufus King was one of the youngest delegates to serve in the Constitutional Convention. In his case, however, youth did not undermine his effectiveness. Says his biographer, Robert Ernst, "his fervent peroration reveals him as one of the outstanding speakers of the Convention, ranking with Gouverneur Morris and Hamilton--though with more consistency than the former and less brilliance than the latter--in an era when forensic ability was highly prized."⁴¹

As the most ardent nationalist of the Massachusetts delegation, King employed his oratorical ability throughout the Convention in support of a number of causes, perhaps chief among them proportional representation in the legislature. He had a difficult time carrying his delegation, however--Nathaniel Gorham usually voted with King, but Caleb Strong usually voted with Elbridge Gerry. On June 30 King argued tempestuously for proportional representation in the Senate. Noting his fears of another confederation like the one under which the states had been operating, he asserted that he was "filled with astonishment that if we were convinced that every man in America was secured in all his

rights" under the planned constitution, "we should be ready to sacrifice this substantial good to the phantom of State sovereignty." He said he saw the Philadelphia Convention as the last opportunity for the states to come together into a free and happy government, proclaiming that "his mind was prepared for every event, rather than to sit down under a Government founded in a vicious principle of representation, and which must be as short lived as it would be unjust."⁴²

The speech drew heavy fire. According to Madison Jonathan Dayton immediately replied that "when assertion is given for proof, and terror substituted for argument, he presumed they would have no effect however eloquently spoken." Luther Martin added that he would "never confederate if it could not be done on just principles," meaning equal representation. But King was neither bullied nor placated and he continued to oppose the Great Compromise through its adoption.⁴³

The forcefulness and number of King's speeches to the Convention suggest that he took an active role on the committees to which he was elected. The youthful delegate sat on six of them, more than any other member, including the important committees of style, navigation acts and slavery, postponed matters, and the two committees on representation in the House, the second of which he chaired. His attitudes towards the subjects of some of his committee work are likely revealed by his comments on the Convention floor.

King agreed with Gouverneur Morris, for instance, that wealth, including slaves, should be considered as well as population in determining representation in the House. He agreed that if slaves were counted for taxation purposes they should also be counted for purposes of

representation; he saw this concession as the only practical way to get South to join with North in the new government. But he wanted slaves to be counted as wealth only, not as part of the population and he was displeased over the adoption of the three-fifths representation rule.⁴⁴

An opponent of slavery, King held his peace on the institution until August 8, at which time he suggested that Northerners could never accept the South's insistence that both slave importation not be hindered and exports not be taxed. It was King who recommended a time limit be placed on the slave trade. But willing to look at the matter more politically than morally in order to achieve a sectional balance, he supported the change of that limit from 1800 to 1808.⁴⁵

King's contributions to the Convention did not end with the resolution of the slave trade problem. On August 28 he had moved for "a prohibition on the States to interfere in private contracts." Instead the Convention adopted the motion by John Rutledge that ~~bi~~ ^{bi} of attainder and ex post facto laws be prohibited. In the final draft of the Constitution, however, without protest from the Convention, the Committee of Style, of which King was a member, inserted a prohibition of the states from "altering or impairing the obligation of contracts."⁴⁶

It was King who suggested that ratification was necessary before the Constitution could be made applicable to a state. The Convention agreed, establishing the nine-state provision to effect the union. Like most of the nationalists, King strongly favored that special ratifying conventions be elected for the process, and that it not be left to Congress or the state legislatures.⁴⁷

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Among the most influential secondary leaders were King. . . . If his creative contributions cannot be found in the grand architectural plan of the new edifice, they are most certainly embedded in its bricks and masonry. . . .

King . . . effectively argued for many of the proposals which became part of the finished Constitution: he upheld the principles of the separation of powers, a strong and independent president, and, in general provisions essential to a strengthened central government. Partly as a result of his exertions, the importation of slaves was restricted. and the clause preserving the sanctity of contracts from state action reflected his influence.⁵¹

Young man of the Revolution that he was, King thus added his voice to the nationalist cause, and, among the consequences, impeded dominance of the Massachusetts delegation by his prestigious colleague and fellow-Harvardian, Elbridge Gerry.

Elbridge Gerry

Unlike most of the "anti"-federalists in the Convention, Harvard's other contribution to the pool of men most responsible for the Constitution was not a strict states' righter. Instead the man whom John Adams characterised as being so obstinate as to be willing to "risk great things to secure small ones," was what his biographer, George Billias, calls a "true federalist," who believed that political power should be "clearly divided" between the states and the central government. Perhaps it is this "clear division" that makes Elbridge Gerry appear to have taken on the Convention with a dual personality: according to Samuel Eliot Morison, his apparent inconsistency cost him friends among the delegates who heard him argue first against and then for the "republican" principle.⁵²

Gerry wanted a stronger central government, to be sure, but he opposed the "extreme" nationalism of Madison, Wilson and Hamilton. He sided with them on the issue of representation by population, but

disagreed with them on the "method of election," Gerry wanting the state legislatures to elect Congress and the state governors to elect the president. In a definite republican vein, however, he argued strongly for mixed government, separation of powers, and rotation in office, and opposed with equal fervor standing armies and the trappings of monarchy. He also sought a bill of rights to assure the balance of power between the state and central governments. Agreeing with Montesquieu that republics were better suited for small countries, Gerry also contended for small electoral districts.⁵³

The Massachusetts delegate was more concerned that the government reflect the republican spirit of the people than that it be structurally framed according to, in Billias' words, "the mechanical and legalistic devices in constitution making." Although he favored some devices like checks and balances, "he did not share Madison's conviction that such devices could reduce politics to an exact science." On the other hand, Shays' Rebellion, in his own state, had shaken him and he admitted in the Convention to having been "too republican in the past." In an attempt to reconcile the attitude's of his subject, Billias says that, though he sought the balance between aristocracy and government by the masses, his "republicanism remained essentially elitist."⁵⁴ Herbert Storing adds:

the bedrock of Gerry's republicanism was . . . the equality and individual rights of the Declaration of Independence. Doubtless a rather vague residual classical republicanism played, for Gerry as well as many of the other Anti-Federalists,⁵⁵ a significant psychological as well as rhetorical role.

It has already been seen in Edmund Randolph and Luther Martin that non-supporters of the Constitution at the Convention had a significant impact on the document's formation. Gerry was no exception. If nothing else, he was one of the most talkative members. His 150 inputs from the floor make him the fifth most participating delegate. In addition to his role as critic and gadfly, however, as chairman of the committee on Senate representation, he played a prominent part in the Great Compromise. On June 29 the conciliator in him, in Madison's words, "lamented that instead of coming here like a band of brothers, belonging to the same family, we seemed to have brought with us the spirit of political negotiators." On July 2 he reiterated, "we must make concessions on both sides." He thus proclaimed on July 5, regarding proportional versus equal suffrage, that "we were neither the same Nation nor different Nations. We ought not therefore to pursue the one or the other of these ideas too closely."⁵⁶

Unfortunately, Gerry did not leave the Convention with his reputation wholly intact. An unknown delegate wrote to Jefferson that the New Englander "was of service by objecting to everything he did not propose." Oliver Ellsworth accused him of failing to support the Constitution because the Convention refused to adopt a proposal that the national government redeem the old continental money, "of which," according to Storing, "he was a large holder."⁵⁷

But despite the opinions of selected contemporaries, Gerry's name has endured as one of the builders of the structure that he refused to sustain. Rossiter places him alongside Mason and Randolph as one the "influentials" of the assembly. This "non-signing 'Grumbletonian,'"

says Rossiter, "never let the Convention forget that 'the genius of the country' was indeed republican."⁵⁸

Morison summarizes the dilemma of the man from Massachusetts: "Gerry wanted the impossible: a government strong enough to protect commercial property, yet so limited and circumscribed beyond possibility of abuse that it could have functioned with difficulty."⁵⁹

In the end, in the inquiry regarding who constructed the Constitution, Gerry emerges as the perfect example of a framer whose refusal to sign the document cannot be used as evidence against him. Dissatisfied though he was with the end result of the Convention, his inputs, sometimes in opposition, sometimes not, served to solidify the republican foundation of the American charter.

THE SCOT AND THE MIDDLE TEMPLARS

James Wilson

Historians generally agree that what James Wilson had to say at the Constitutional Convention justifies his having said so much of it. The second most talkative delegate, he ranks with Madison as political philosopher and primary architect of the American governmental system. For the student of the Convention, it is relatively easy to identify the principles on which Wilson operated and which he sought to incorporate into the Constitution.

As with Paterson, according to Charles Page Smith, the Federal Convention constituted the greatest event of Wilson's life. Scottish by birth, Wilson obtained a good education in his homeland before coming to Pennsylvania to establish a residence, learn the law under John

Dickinson, and support as a pamphleteer the patriot cause in the Revolution. Receiving from the Pennsylvania assembly, next to Gouverneur Morris, the fewest votes of the eight men they sent to the Constitutional Convention, Wilson was not deterred in the least from assuming from the beginning a prominent role in shaping the new government.

Wilson wanted much more than to simply revamp the Articles of Confederation. His overriding principle was trust in the people, explicit and implicit. Using a pyramid as a metaphor for government, he maintained before his fellow delegates that the people should be the broad base at the bottom. "No government could long subsist without the confidence of the people," he asserted during the first week of the Convention.⁶⁰

"The ablest allies in the Convention," according to Smith, Wilson joined with Madison on many of the most important issues to come before the delegates. Says Irving Brant, "both were high nationalists. Both were committed to rule by the people under moderate safeguards." One of their major victories came in the ultimate form taken by the executive. Generally supporting one another, Madison argued early on for the head of state to be independent from the other branches of government. Wilson succeeded in the second week in having the Convention adopt a provision for a single executive. Consistently for election of the executive by the people, Wilson attempted on June 2 to make his proposal practicable by outlining a plan for an electoral college. The plan was rejected; the manner for electing the president was debated off and on

for three months; and, at last, the delegates returned to and adopted an electoral college.⁶¹

Wilson and Madison were the leading spokesmen of the "large-state bloc." Wilson answered Paterson when Paterson charged the large states with trying to swallow up the small and, again, when Paterson presented the New Jersey Plan. Drawing on history for support, the Scottish-born Wilson countered the Irish-born Paterson's provisions point for point. Arguing against the New Jerseyite's insistence that the Convention's powers were limited to a revision of the Articles of Confederation, Wilson asserted that "with regard to the power of the Convention," they had the authority to "conclude nothing" but "to propose anything." When the Convention voted to accept as the basis for its proceedings the Virginia over the New Jersey Plan, Wilson had won the proverbial battle. But when the delegates agreed on equal representation in the Senate, he lost, in some degree, the proverbial war. This irony should not be lost: when the committee on Senate representation proposed its compromise, Wilson protested that it had exceeded its powers.⁶²

Although most frequently cited for his contributions to the formation of the executive and his opposition to the small-state plan, Wilson's influence extended to a number of the other important issues of the debates. Perhaps ignoring Madison, Seed says the Scotsman was unsurpassed in the Convention "in the range of his contribution." Among other things--invariably for the people, he argued strongly for their direct election of both houses of Congress. In addition, he promoted a joint, absolute executive-judicial veto of legislation. He opposed the appointment of judges by the legislature, but simultaneously favored

that they serve during good behavior, unimpeachable by the legislature. He strongly favored that the Constitution be ratified by special state conventions, not merely by state legislatures. He was against restrictions on proposed new states, arguing for their admission on an equal basis with the original states. Finally, as a member of the Committee of Detail, he sat with the group that likely did more than any other to mold the many diverse plans and ideas of the Convention into a concrete constitution.⁶³

In presenting his ideas to his colleagues, Wilson did not act in a theoretical vacuum. Says Smith, "with few exceptions the delegates were not original thinkers"; however, "Wilson and Madison perhaps came closest among the members of the convention to meriting the name of political philosophers." He notes that in support of Wilson's proposals for the executive, the Pennsylvania delegate drew on Vattel, Montesquieu, Locke, Burlamaqui, Thomas Reid and James Burgh. And his "faith in popular government . . . grew out of his reading of Aristotle and Cicero, of Hooker and Locke, but most of all out of the 'common sense' doctrines of the Aberdeen philosopher Thomas Reid." In addition, speculates Smith, Wilson may have drawn on his knowledge of Roman law in contributing to the Constitution's impairment of contracts clause.⁶⁴

Generous in his praise, Seed says that John Dickinson, Robert Morris, Benjamin Franklin (whose speeches Wilson frequently read to the Convention), George Washington and others likewise "all esteemed him highly as a man who possessed to an unusual degree both knowledge and wisdom." And for good reason in that everything Wilson did in the

Convention, claims Seed, "was consistent in terms of the broad general principles which guided his every action: that the people, in practice as well as in theory, were the source of all legitimate power; that the future of America depended on the creation of an effective national government; that the spirit diffused through the nation should be broadly liberal."⁶⁵

In short, Wilson's contribution to the creation of the U.S. Constitution was substantial. Clinton Rossiter gives him "an honorable second" "only to Madison" in laying the republican foundation of the document. Again, Brant, whose professional life was virtually absorbed by Madison, concedes that Madison and Wilson together, "stand out as the constructive statesmen of the convention."⁶⁶ Smith says of Wilson's impact on the Convention:

The Convention was the central fact in Wilson's life. His work there constituted his greatest contribution to the future peace and stability of his adopted country. . . Wilson as one of the ablest political theorists in the Convention, espoused more of those principles which have since become prominent features of American democracy than any other delegate.⁶⁷

James Bryce's uncynical appraisal of Wilson is equally instructive:

The services which such a mind as Wilson's--broad, penetrating, exact, and luminous--can render to a nation can hardly be over-estimated. In the long run, the world is ruled by ideas. Whoever gives to a nation, and most of all to a nation at the outset of its career, sound, just principles for the conduct of its government, principles which are in harmony with its character and are capable of progressive expansion as it expands, is a true benefactor to that nation, and deserves to be held in everlasting memory. Such a one was James Wilson.⁶⁸

Thus the Scottish scholar from the University of St. Andrew's joined the Virginian alumnus of the College of New Jersey as preeminent

political philosopher of the Convention. Though not alone in the endeavor, these two men, more than any other, provided the intellectual backdrop for the delegates' project of Summer 1787.

John Rutledge

One of Wilson's closest acquaintances among the members of the Constitutional Convention was the head of the South Carolina delegation, John Rutledge. Former associates, Rutledge had once headed the American bar which Wilson led at the time of the Convention. According to Richard Barry, the author of Rutledge's only full-length biography, the two men were intellectual complements. Wilson was more erudite; Rutledge more instinctive. Wilson more "liberal"; Rutledge conservative, but "technically, they worked together, hand in glove," both giving and taking where necessary.⁶⁹

Barry indicates that it was Rutledge and Wilson who created the "grand" political strategy of the Convention. He says that Rutledge thought out in advance the plan to keep the proceedings secret; he and Wilson then put it to Benjamin Franklin, who in turn put it to Washington, who in turn put it to the Virginia delegates. The result was before the Convention had even begun many of its most powerful figures had agreed on the secrecy plan that would later distress the small-state representatives. According to Barry, "with the creation of this integument of secrecy, Rutledge took the step which probably spelled the difference between success and failure of the great 'experiment.'"⁷⁰

As was also planned, Rutledge seconded the nomination of Washington as president of the Convention, but the South Carolinian was otherwise initially content to allow other members of his delegation to

lead out in the debates, particularly Charles Pinckney. Barry points out that Rutledge was the nineteenth man to speak from the floor, suggesting that he delayed his active involvement so as to analyze the makeup of the members and politically organize them. "Conservative interests" in the Convention looked "instinctively" to Rutledge for support, but he allied himself openly with the "liberals," led by Wilson and Franklin. Barry claims that one of the incidental consequences of the Wilson-Rutledge alliance, which became a triumvirate when Roger Sherman came to the foreground, was the thwarting of Alexander Hamilton's belief that he could dominate the proceedings of the Convention. In addition to making and breaking political alliances among the delegates, however, Rutledge's contributions to the Convention, partly through these alliances, lay in two main areas: the resolution of the slavery issue and the first draft of the constitution.⁷¹

Barry disagrees that Rutledge was the chief promoter of the slave interest in the Convention. Citing the absence at any time in his life of moral defenses of slavery by the delegate and his eventual cessation of personal slave ownership, the biographer claims Rutledge's defense of the institution was political--that is, he at first shrewdly took extreme positions before his fellow delegates on the navigation act and slave trade issues in order to bring about later compromise. According to Barry, "Rutledge's attitude toward slavery . . . became a vital factor. It was through his skillful guidance that the issue was kept under control The slavery issue was used by Rutledge to bind together the basic agreements in the Convention."⁷²

Barry says the success of this aspect of the Convention basically came down to Rutledge convincing Sherman, the dominant New Englander in the Convention, to accept the provisions regarding the slave trade, which he alleges Rutledge succeeded in doing on the evening of June 30 in his rooms in the Indian Queen. In addition, according to Barry, this same evening the South Carolinian managed to turn the North Carolinians away from their alliance with the large states and, says Barry, it was Rutledge who convinced the large states to go along with the Great Compromise.⁷³

The chief chronicler of his life also claims that Rutledge was the first to be chosen to sit on the Committee of Detail to draft a constitution.⁷⁴ In eight days between July 26 and August 4 during which this committee produced its draft, Rutledge, head of the committee, was the only member present at every session. Although the original drafts of their work are in the hands of Randolph and Wilson, according to Barry, the changes appear to be those of Rutledge. Says he, "the Constitution, though formed of materials known to all and contributed by very many, found expression through the medium of one man, John Rutledge." In his draft, among other things, Rutledge gave the executive full control of the military in time of war and allegedly imbued the judiciary with its power--the judicial clause "is the essence of John Rutledge," says Barry.⁷⁵

Although Clinton Rossiter states that Wilson actually reworked the draft after Rutledge had made his changes, he agrees that among the committee members, Rutledge and Wilson "deserve special credit" for its accomplishment. And ultimately, the draft was accepted in substance, to

the degree, says Barry, that the final version of the Constitution differed from Rutledge's "only in arrangement and in the addition of some qualifying and, presumably, some decorative phrases."⁷⁶

So in forming political alliances, effecting the compromise on the slave trade and actually drafting the Constitution, Rutledge's accomplishments were considerable. Overall assessments of his contribution to the Convention vary only slightly. Meister generally echoes Barry's little adulterated praise. Irving Brant includes him with Madison and Wilson as one of the most important "in actual construction of the government." Farrand, on the other hand, includes John Rutledge with "other members of the convention who deserve notice, though hardly to be classed with" Madison, Wilson, Washington, Mason and Charles Pinckney. Rossiter mentions him first among the "influentials," as "John Rutledge, who spoke often and usefully, sat on five committees, guided the labors of the committee of detail, was the gadfly of the Convention in August and September, and served the cause of moderate nationalism with intelligence and devotion." Horsnell agrees that his most important work was as chairman of the Committee of Detail which laid "the foundations for the federal system." And Warren lists him as one of the "ten men [who] stand out as chiefly responsible for the form which the Constitution finally took." In the end, speculative as may have been his role in certain details of the events, few would challenge Rutledge's place among the nineteen or twenty most important contributors to the creation of the Constitution.⁷⁷

Charles Cotesworth Pinckney

Another South Carolinian veteran of the Inns of Court, as well as of Oxford, Charles Cotesworth Pinckney, made his greatest contribution to the Constitution in making it palatable to his constituency, and consequently, to the Southern States interest as a whole. Not a visionary like Madison, Wilson or even his fellow delegate Rutledge, he contributed more through political strategy than republican theory. Prior to his election as a delegate he had been one of the most important and distinguished members of the South Carolina legislature, performing more important legislative duties than perhaps any South Carolinian other than Edward Rutledge. But again unlike Madison, or even his cousin and fellow delegate, Charles Pinckney, Charles Cotesworth did not make vast preparations for the Convention. Upon his selection as a delegate, he gathered up his bride of ten months and headed for Philadelphia, a bundle of ambivalence--wanting an aristocratic, national government, but not too much of it.⁷⁸

According to Marvin Zahniser, author of Pinckney's most complete biography, the South Carolinian believed a strong central government could do much to further his State's economy. But all the while seeking central control of commerce, he feared New England dominance of trade. His unwritten agenda at the Convention called for absolute protection of the South's slave interest and Federal assumption of State war debts, though in behalf of original creditors only.⁷⁹

From the beginning Charles Cotesworth, like many delegates, doubted that the authority of the Convention extended beyond revising the Articles of Confederation. Zahniser sees this "reaction to this

historic moment" as an indication as to "why Pinckney never attained greatness. There was a lack of broad vision, a willingness to sacrifice great plans for technicalities, the absence of a statesman's view."⁸⁰ Once reconciled to the creation of a new government, however, in shaping these "technicalities," Pinckney made a significant difference.

Pinckney probably did as much or more than any other delegate in determining the ultimate position the Constitution would take on slavery. He argued vehemently against any restrictions on the institution. He knew South Carolina would reject any governmental charter that created significant restrictions and he told his fellow delegates as much. Ignoring the moral issues of slavery, he focused on its economic benefits, especially those from which he believed the North benefited as well as the South. According to Madison, "he contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; The more consumption also, and the more of this, the more of revenue for the common treasury."⁸¹

Pinckney represented South Carolina on the committee on navigation acts and slavery. Although his particular role within the committee is as unknown as the roles of most of the delegates on most of the committees, it is not unreasonable to suppose, by his outspokenness on these issues in the Convention, that Charles Cotesworth played a decisive role in the bargain struck and presented to the assembly as a whole. In one clause in particular, his influence is manifest, for it was he who successfully moved on the floor, that the committee's recommendation that the slave trade be abolishable after 1800 be

extended eight years to prevent Congressional interference before 1808.⁸²

Charles Cotesworth further insisted that slaves be counted in representation and that exports not be taxed. He countered arguments that the slaves should be unrepresented citizens with contentions that they constituted a form of wealth, and wealth as well as population should be fully represented in the new government. He accepted the three-fifths agreement reluctantly but in the spirit of compromise. He fared better on the export issue, when the Convention accepted his argument.⁸³

In addition to his major work in protecting Southern economic interests, Pinckney made a number of other suggestions to the Convention. His fears of the central government becoming too powerful impelled him to advocate the election of members of the House by the state legislatures, or alternatively, as the state legislatures directed. He wanted the term for senators reduced from six to four years and for senators to serve without compensation, or at the very least to be paid by the states. And it was Charles Cotesworth Pinckney who made the motion to establish the committee on Senate representation.⁸⁴

Pinckney also told his fellow delegates that he did not want the legislature to appoint the national treasurer and that he desired federal control of the military. As a member of the committee on state debts he assisted in bringing the Convention to its ambiguous conclusion regarding their assumption by the national government.⁸⁵

In the end, Charles Cotesworth made fewer significant contributions to the Constitution than his cousin Charles or his fellow South Carolinian, John Rutledge, but he did work diligently and largely with success to achieve a balance of power. "His statesmanship was founded upon achieving the possible," says Zahniser. His mere presence and weighty endorsement of the Constitution were themselves contributions and on the last day of the Convention, Charles Cotesworth countered Elbridge Gerry's refusal to sign the document with a pledge that he would sign and "support it with all his influence."⁸⁶

John Dickinson

John Dickinson was one of the early members of the Inns of Court among the delegates for whom constitution making was not a novelty. Dickinson had been a major promoter of the Philadelphia Convention among the attendees at Annapolis in September of 1786 and was the Annapolis Convention's chairman. A member of the Stamp Act Congress and the First and Second Continental Congresses, he was the primary author of the first draft of the Articles of Confederation, as well as many congressional resolutions and appeals and of the well-known revolutionary Letters from a Farmer in Pennsylvania (the fame of which earned him an honorary LL.D. from the College of New Jersey). Few at the Federal Convention exceeded this delegate from Delaware in experience in drafting public law documents and written political polemics.⁸⁷

Among the older delegates, Dickinson was often ill during the Summer of 1787, necessitating his absence from many Convention meetings and his early departure. Nevertheless, as one of the two convinced

nationalists of the Delaware delegation, he made a valuable contribution to the Constitution. Active and articulate while present, he was restricted initially by the Delaware Assembly's mandate that its delegation merely revise the Articles of Confederation. Specifically, Delaware was the only state to insist that no change be made on the rule of suffrage in the legislature.⁸⁸

According to Milton Flower, Dickinson wanted a "strong government with clarity in the division of responsibilities in the delegation of power"; he was not necessarily for centralization. He assumed the creation of a tripartite government of executive, legislative and judicial branches. He agreed that one branch of the legislature should be elected directly by the people. But he proposed that the Senate be elected by the state legislatures. Wilson had likened the national government to a pyramid with the people as its broad base; Dickinson, on the other hand, wanted to ensure some state involvement. He envisioned a national governmental system that stood metaphorically as the sun, with the states as planets revolving around it.⁸⁹

Early on in the proceedings Dickinson called for equal representation in at least one house. Long before the issue was resolved, he was the first delegate to suggest on the floor the compromise of one house being equally represented and another proportionally. He later suggested that the New Jersey and Virginia plans be combined and stated his view that money bills should be initiated in the lower house, amendable in the upper--all consistent with the scheme that was ultimately adopted.⁹⁰

Dickinson claimed to be instrumental in persuading the Convention to change its provision for a senate-elected president to a more direct election by the people. Though somewhat fearful of a single executive, he strongly advocated that the executive be given responsibility and that it remain independent of the other branches.⁹¹

As much or more than any of the delegates, Dickinson drew on the lessons of history to support his contentions, particularly, though not exclusively, British history. "Experience must be our only guide," he exhorted his fellows, meaning, as evident from the context of this and his other speeches, especially the experience of the ages, and not only the individual, combined experience of those there assembled.⁹²

Time and again he compared the American experiment with British and other historical precedents: Explaining the derivation of the British executive's power, he remarked that a limited monarchy was "one of the best Governments in the world," but impractical for America. Later, according to Madison, Dickinson stated that the Senate should be "assimilated" "as near as may be to the House of Lords in England," and "he repeated his warm eulogiums on the British Constitution." On the issue of Senate size, Dickinson "gave a historical sketch" of the Roman tribunal system. Opposing annual elections, he stated that the idea was "borrowed from the antient usage of England, a country much less extensive than ours." Being opposed to the power of the judiciary to set aside laws, "the Justiciary of Arragon he observed became by degrees, the lawgiver."⁹³

Against slavery but eventually tolerant of compromise on the issue, Dickinson nevertheless found it necessary to refute Charles

Pinckney's historical defense of the institution. Citing "the case of Greece, Rome and other ancient States," Pinckney said, "in all ages one half of mankind have been slaves." To which Dickinson replied, "Greece and Rome were made unhappy by their slaves."⁹⁴

Although Dickinson's ill health prevented him from making greater contributions to the Convention, he, nevertheless, was sufficiently active in June and August as to have a substantial impact on the proceedings. Despite his infirmities he was a member of four committees, including those on slavery and postponed matters, and he spoke some fifty times on the Convention floor, sixteenth among the fifty-five delegates in this regard. In addition, in that he was draftsman of the original version of the Articles of Confederation, many of Dickinson's ideas were carried over to the Constitution. His advocacy of a strong, national government with a balance of power between the state and central systems was borne out by his draft of the Articles--he having included provisions for a strong union which had been later revised under the jealous watch of the several states.⁹⁵

In sum, Dickinson was the outstanding member of the Delaware delegation. His suggestions were adopted with such frequency by his deferential fellow framers as to assure him a lasting place among the men most active in creating the Constitution.

THE PRINCETONIANS

Oliver Ellsworth

Among College of New Jersey alumni most responsible for the formation of the Constitution was the Connecticut delegate, Oliver

Ellsworth. Reputed to be "the largest single consumer of snuff in the United States" and an irreclaimable talker-to-himself, Ellsworth, despite his eccentricities, had been expected to make a stable, useful member of the Federal Convention.⁹⁶ Resigning a Connecticut Superior Court judgeship so he could serve as a delegate, he took his seat in Philadelphia on the twenty-eighth of May. According to Ronald Lettieri, recent disturbances in the States, such as Shays' Rebellion, made Ellsworth no great friend to popular sovereignty in the Spring of '87.⁹⁷

Ellsworth was not quick to become active on the Convention floor. Lettieri suggests that the Connecticut threesome of Ellsworth, William Samuel Johnson and Roger Sherman, had an understanding that Sherman would be their spokesman. However, as "one of the most outspoken advocates of the necessity to maintain the state governments in the proposed plan of government," he gradually stirred to life following the presentation of the New Jersey plan on June 15. Although having his say on most of the important points of debate that followed the "Great Compromise," it was in this compromise itself that Ellsworth undoubtedly made his most significant contribution--to the extent that some even refer to the "Ellsworth Compromise."⁹⁸

When the Convention was on the point of breaking up in despair over Senate representation, the Connecticut delegation in particular pushed for compromise. Ellsworth moved that representation in the Senate be like that under the Articles of Confederation. Arguing for a government part federal and part national, he made his most important and most famous speech in this regard. According to Madison, Ellsworth "trusted that on this middle ground a compromise would take place. He

did not see that it could on any other. And if no compromise should take place, our meeting would not only be in vain but worse than in vain." Proclaiming himself not generally "a half-way man," nevertheless he desired that they "do half the good" they could, "rather than do nothing at all." Keying to this speech, Rossiter declares, "Oliver Ellsworth, the 'half-way man' of the century . . . may have done more in Philadelphia for the Union than Hamilton, Wilson, and the two Pinckneys together."⁹⁹

Brant agrees. Contrasting Ellsworth's approach with Sherman's, he notes, that Ellsworth worked to keep the union together, "while Sherman used compromise to gain specific objectives." Historians generally continue to divide the credit for the Senate compromise between Sherman and Ellsworth, some leaning one way, some the other. But neverminding who had preeminence, Ellsworth's contribution was important. Although deprived of his place on the committee for Senate representation by illness or, Christopher and James Collier would suggest, intentional "indisposition" to make room for Sherman, Ellsworth took on and defeated Madison and Wilson, proportional representation's strongest advocates, on the Convention floor.¹⁰⁰

Ellsworth's contributions were not limited to Senate representation issues, however. In addition to his role in effecting the Great Compromise, he sat on the Committee of Detail, probably the Convention's most important committee, the five members of which Rossiter describes as "learned in the law, rich in political experience, skilled at drafting, and laden with prestige." Lettieri says that as a

member of this committee, Ellsworth began to write the first draft constitution.¹⁰¹

Furthermore, speaking eighty-eight times from the floor, eleventh overall among the delegates, Ellsworth influenced decisions on other issues to come before the assembly. For example, he fought for the States to retain some control of the armed forces, promoted the congressional regulation of commerce, and pushed for enumerated powers. Although a Northerner, he took the surprising position that the Constitution must protect slavery, probably out of fear that the South would otherwise not protect Northern trade interests. "The morality or wisdom of slavery are considerations belonging to the States themselves," he told the delegates.¹⁰²

Ellsworth left the Convention before it ended, so he did not sign the Constitution. He did support its ratification, however. Although an advocate of the states, he wanted a national government, but only on the best terms available. In the last analysis, perhaps one indication that he, Sherman and Johnson made an impact in the Convention, especially in advocating their state's interests, is reflected in the early date and the large measure by which the Connecticut assembly ratified the finished document (128 to 40, January, 1788).

Luther Martin

Paul S. Clarkson and Samuel Jett have written, "If James Madison is truly 'the father of the Constitution,' at birth his 'child' did not have the form and appearance that he had dreamed and planned for it during its period of gestation. It was ultimately shaped by non-Madisonian prenatal influences, among the most important of which

was that of Luther Martin." According to these, his biographers, this man Martin, whom Rossiter calls "a misfit of splendid proportions, one of the most fascinating characters among the Framers," played an essential role in the creation of the Constitution, despite his refusal to sign it or even to stay until the debates were over. Even Rossiter grants that Martin was "very useful" to the proceedings, "garrulous, sour, and pigheaded, yet an influential pricker of egos and consciences."¹⁰³

Characterizations of Maryland State Attorney General Martin as he emerged at the Convention remain varied. To Clarkson and Jett he is something of a hero that, at least in some degree, undermined "a bold conspiracy" by the Virginia delegation to create a national government that "went far beyond the intent of the legislatures of the states which appointed the delegates and the authorization of the congressional resolution." Other writers admit him as brilliant but emphasize that he was also shortsighted, eccentric, disorganized, dull and alcoholic. Christopher and James Lincoln Collier hint but fall just short of pronouncing that Martin gave his infamously long speech at the Convention under the influence of too much drink. "Ornery and brilliant," says Margaret Horsnell of the Maryland delegate. His fellow Convention member, William Pierce, described Martin as "so extremely prolix that he never speaks without tiring the patience of all who hear him."¹⁰⁴ Though he is derided by some and appreciated by others, both now and among his contemporaries, few would deny that the Convention would have taken many a different turn had Martin been absent.

When Martin took his seat in the Convention on the 9th of June, he was shocked at the plan laid out before the body for its consideration. Upon his arrival he had acquired copies of the various proposals being debated and arranged with the secretary to read the minutes of the proceedings thus far. He was dismayed at the adoption of the agreement to keep the debates secret, as well as at the seven-state quorum and the majority vote rules, convinced that these rules worked to the advantage of the Virginia plan. Again Clarkson and Jett emphasize that he believed "the small states generally, and his own state in particular were the victims of a well-planned and well-executed conspiracy."¹⁰⁵

By splitting and thus neutralizing Maryland's vote with his support for equal representation in the House of Representatives, Martin's arrival had an almost immediate impact on the proceedings. Martin next tried unsuccessfully to abolish the requirement that state officers take an oath to support the new constitution.¹⁰⁶

On June 19 and June 20 Martin made speeches placing him very much in the small states' camp, foreshadowing his June 27 states' rights tour de force. On the 19th he spoke to say that he considered the separation from Great Britain as having placed the states in a state of nature with regard to one another and thus on equal footing in terms of political sovereignty. On the 20th he echoed this theme, adding that it was to the states that they must "look up for the security of their lives, liberties and properties." The people of America, said Martin, were "afraid of granting powers unnecessarily" to a national government, "lest the powers should prove dangerous to the sovereignties of the

particular States which the Union was meant to support; and expose the lesser to being swallowed up by the larger."¹⁰⁷

But it is for his speech of June 27th and 28th that Martin is most often remembered. It was probably from this oration that Pierce determined Martin's oratorical style to be "prolix." Madison wrote that on this day Martin "contended at great length," and that Madison was recording "the substance of a speech which was continued more than three hours." He adds, Martin "was too much exhausted he said to finish his remarks, and reminded the House that he should tomorrow, resume them." Of the next day's performance the self-appointed scribe and Martin's opponent recorded, "the residue of his discourse was delivered with much diffuseness and considerable vehemence."¹⁰⁸

In an attack on Martin the following year, his former college classmate, Oliver Ellsworth, said it even more forcefully. He wrote anonymously to the Marylander:

The day you took your seat must be long remembered by those who were present; nor will it be possible for you to forget the astonishment your behaviour almost instantaneously produced. You had scarcely time to read the propositions which had been agreed to after the fullest investigation, when, without requesting information, or to be let into the reasons of the adoption of what you might not approve, you opened against them in a speech which held during two days, and which might have continued two months, but for those marks of fatigue and disgust you saw strongly expressed on whichever side of the house you turned your mortified eyes.¹⁰⁹

In Martin's defense, Ellsworth's remarks were made in the course of political polemics and themselves contain important errors of fact, such as the reference to Martin's speech being given immediately after his arrival. But few would disagree that on this occasion the speech

was long (though not as long as Hamilton's when he presented his plan to the assembly) and, to many, tiring.¹¹⁰

Not surprisingly, the substance of the speech was a contention for equal representation in the new legislature, again based on the theory of the sovereignty of the individual states. Arguing for the second time in the Convention that the states were then in a state of nature and thus equal, he quoted at length from Locke, Vattel, Lord Summers, Rutherford, and Joseph Priestley. He continued that the three large states, Virginia, Pennsylvania, and Massachusetts, threatened to make slaves of the other ten and that he would prefer a breaking up of the larger states into smaller units or separate large-state, small-state confederations, than the system of proportional representation that was being proposed.¹¹¹

But substance alone was not the sole, nor perhaps even primary, significance of this speech. Clarkson and Jett disagree that Martin's talk was merely a "'boring,' 'inopportune,' and 'fatiguing' harangue." However tiring to his auditors, Martin may actually have been engaged in a kind of filibuster, fighting for time for the New Hampshire delegation to arrive and for the New Jersey delegation to rebuild their quorum, which was down from the sickness of one of their members.¹¹²

Corroborating James M. Beck on the issue of equal representation, Martin's biographers quote that the small states had "'brought up their heaviest artillery in the person of Luther Martin of Maryland, who then was, as he afterwards remained for another generation, the foremost advocate of the American Bar.'"¹¹³

According to Clarkson and Jett, "Whatever the pejorative observations of Ellsworth, Pierce, and more recent commenters [sic], both the small-state and large-state factions at that time acknowledged the critical weight and effectiveness of Martin's effort." Following his speech, Madison and Wilson both rose to oppose further motions for equal representation, but the proverbial writing was beginning to appear on the wall. Although the vote was taken and lost again for an equal vote per state in the lower house, events from here moved swiftly toward the "Great Compromise" on representation in the Senate.¹¹⁴

Martin was chosen as a member of the committee to bring about this compromise. When the committee work was said and done and the vote in the Convention taken, he accepted the solution somewhat grudgingly, but accepted it nonetheless. Clarkson and Jett credit Martin with much of this small-state victory.¹¹⁵

The vote on Senate representation did not mark the end of Martin's contribution to the Constitution. He went on to argue successfully against a legislative veto of the national legislature over the legislatures of the states. He also moved the first version of the supremacy clause, although it was subsequently modified. Martin further opposed associating judges with the executive on a revisionary council, moved for electors chosen by the state legislatures to elect the president and argued for state control of the militia.¹¹⁶

Finally, with varying degrees of success, Luther Martin advocated the ineligibility of the president for re-election, opposed restrictions on the emission of paper money, moved to tax or prohibit the importation of slaves and to restrict the presidential pardoning power. Although

not always speaking on the issue, he also opposed the "obligation of contracts" clause, the suspension of writs of habeas corpus, and favored a constitutional bill of rights.¹¹⁷

On September 4, unsatisfied with the direction the debates had taken, Martin left the Convention, as Horsnell says, "in disgust." He continued to oppose the Constitution in ratification proceedings. Nevertheless, although he seems primarily an obstructionist, Martin should not be easily dismissed. Clarkson and Jett are probably accurate to suggest that "his principal contribution was to block Madison's move toward a constitution of such extremely broad national powers that it would unquestionably have failed to be adopted, leaving the country under the Articles, in the very state which the Federalists professed to fear."¹¹⁸

William Paterson

Not all of Luther Marin's schoolmates would become his implacable opponents on the Convention floor. On the issue of suffrage the Marylander found an ally in the New Jerseyite, William Paterson. Although Paterson had been a member of the Continental Congress and would later serve as a U.S. Senator and an associate justice of the Supreme Court, his primary biographer, John E. O'Connor claims that "Paterson's finest hour came in the federal convention of 1787." Says O'Connor,

Most histories mention his name with reference to the Paterson Plan or the New Jersey Plan as it is also called, but until now the full extent of his contributions to the American Constitution has not been completely recognized. In the dynamics of debate and compromise that gave birth to a new and durable formula for American government, Paterson proved himself a consummate politician as well as a great lawyer and statesman.¹¹⁹

There is little question that Paterson's greatest contribution to the Constitution came in the form of the small-state alternative to the Virginia plan that he presented and helped to prepare. It was ultimately rejected as a whole, in fact only one of its specific provisions found its way into the final document, and that in modified form; nevertheless, Paterson's plan served a crucial purpose in the Convention by drawing the battle lines between the nationally and "federally" minded delegates. With the presentation of his plan it became apparent to all but the most intransigent large staters that a compromise of some sort would have to be reached on the question of representation in the legislature.

When the Virginia plan was presented, Paterson had two main concerns with it--it called for proportional representation in Congress and for a national legislative veto on the legislative acts of the states. In the eyes of New Jersey's delegates, these provisions were menacing; their state wanted a stronger confederation, but it was not in favor of rejecting the current government entirely. In the six-week struggle over representation that was to follow, Paterson was a primary leader and spokesman for the small states.¹²⁰

The New Jerseyite delegate's first important contribution to the debates came on June 9 when, states his biographer, "he placed the central issue [of representation] squarely before the convention." Says O'Connor, "Drawing on all the oratorical skills he had practiced as a son of Clio, and all the political knowhow he had absorbed during the turbulent years since, Paterson put together a forceful and convincing speech." He began by affirming that the Convention had no authority to

adopt the plan the Virginians were proposing, but was limited to revising the Articles of Confederation. He followed with an assertion that the Virginia plan would never be ratified and suggested that the Convention must "follow the people." If the government were to be national, he declared, then new boundaries would have to be drawn to make all the states equal. He spoke of the nature of sovereignty, insisting that the sovereignty of the states made them all equal. He favored a strong central government, but one that operated on the states rather than on individual citizens. He concluded by taunting that though the large states unite in their own federation, New Jersey would never join on the basis of the Virginia plan. "He had rather submit to a monarch, to a despot than to such a fate."¹²¹

With this speech Paterson launched a vigorous campaign on behalf of the small states. "Practically everything Paterson did during his time in the Convention was directly related to achieving equal representation for all the states," says O'Connor. But on the 11th of June a vote was taken with proportional representation prevailing in both houses. Given this result, O'Connor says, Paterson conceived the small-state plan in order to pressure his colleagues to reconsider.¹²²

On June 15 the New Jersey plan was presented. In the days ahead Paterson defended it while Hamilton, Wilson and Madison took turns destroying it. When the vote was taken, the Virginia plan was selected as the basis for the remaining debates and the New Jersey plan was scrapped. Nevertheless, Paterson's failure was minimal because for him the plan had primarily been a vehicle by which to bring about equal representation. Within days of the vote, South Carolina, in the person

of Charles Cotesworth Pinckney, and the delegation from Connecticut were encouraging compromise. Again according to O'Connor, "Paterson had some part in the formulation of the compromise, but he was especially influential in winning the delegates' support for it." When the committee for Senate representation was established on July 2, Paterson was selected as the New Jersey member.¹²³

The results of this committee's work were noted in Chapter Four. There are no records of Paterson's particular role on the committee, but following its report to the general assembly, he spoke three times to insist on adherence to the proposed compromise, noting that "there was no other ground of accommodation."¹²⁴

Meanwhile, a new committee had been established to determine the exact proportion of representation in the House of Representatives. Paterson outspokenly declaimed against counting slaves in determining these figures. In essence he said that blacks, not being allowed to vote, should not be represented. Although O'Connor suggests Paterson here and always took an extreme position to illustrate to his colleagues just how much the small states were compromising, in this particular case Madison seems to have brought him up short. The Virginian pointed out to his New Jersey colleague that his argument against counting slaves "must for ever silence the pretensions of the small States to an equality of votes with the large ones. They ought to vote in the same proportion in which their citizens would do, if the people of all the States were collectively met."¹²⁵

On July 16, the small states won the bid for equal representation in the Senate, though by a bare majority. That day a disgruntled Edmund

Randolph proposed an adjournment so that "the large States might consider the steps proper to be taken in the present solemn crisis of the business, and that the small States might also deliberate on the means of conciliation." Paterson immediately called the Virginia governor's bluff by proclaiming that he agreed with Randolph, "that it was high time for the Convention to adjourn that the rule of secrecy ought to be rescinded, and that our Constituents should be consulted." Insisting there was no more room for compromise on the part of the small states, he asked Randolph to make his motion in the form of an adjournment sine die so that he could second it "with all his heart."¹²⁶

This Randolph was unwilling to do. Thus, by his mastery of, according to O'Connor, "subtle political maneuvers," Paterson flushed out what the delegates knew in their hearts--that adjournment sine die and revocation of the secrecy rule at this stage would risk the loss of everything they had thus far accomplished. "Push" had come to "shove" and large state delegates could no longer avoid the consequences: they must accept the compromise or likely lose any chance of a union with the small states.¹²⁷

With the achievement of equal representation in the Senate, Paterson seems to have seen his purpose in Philadelphia as having been accomplished. Having complained that important business at home had suffered by his attendance, he left the Convention on July 23. Bearly wrote to him on August 21 asking him to return, but he showed no enthusiasm to do so. He did write to fellow Princeton alumnus Ellsworth shortly thereafter, however, to inquire how things were progressing and stating his hope that the delegates "would not have as much Altercation

upon the detail, as there was in getting the Principles of the System."

He returned only in September to sign the completed Constitution.¹²⁸

O'Connor sums up Paterson's role at the Convention:

To the extent that Paterson was responsible for forcing the large-state delegates to recognize these political facts of life [that the small states were as important to the union as the large and would go along if so regarded], he deserves credit for the ultimate success that the convention achieved. And to the extent that his firm stand won acceptance of the idea of an upper house of the legislature where the states would be equally represented, Paterson deserves the title "Father of the United States Senate."¹²⁹

Other historians equally recognize his significance for the Convention: Rossiter agrees that Paterson "set some sort of record for stubborn courage among the delegates" and rates him "very useful" as "the stubborn and successful advocate of state equality, whose departure in late July may have robbed him of a much higher ranking." For Irving Brant, Paterson is the only delegate whom he categorizes both as one of the "outstanding men" "in setting forth principles accepted by the convention" and one of those from whom "principles rejected by the convention. . . most notably" came.¹³⁰

In the end the small states fight would likely not have gone forward with the success that it did without him. Though by far not the most frequent speaker at the Convention, and a member of only one committee, Paterson nevertheless must be recognized as one of the prime contributors of fundamental principle to the Constitution.

James Madison

The current popular tack to take among scholars with regard to James Madison and the Constitution is to remind the reader that he has frequently been called the "Father of the Constitution," deny in varying

measures the validity of this appellation, and then proceed, in discussing Madison's contributions, to show how nevertheless he did more, by far, to ensure the success of the Convention than any other delegate. The point is, if Madison is not the "father" of the document, then there is no father, only fathers, among whom he is patriarch.¹³¹

There was hardly a phase or aspect of the constitution-making process in early national America in which Madison was not involved--from promoting the Annapolis assembly which engendered the Federal Convention and helping convince Washington to lend his prestige to the Virginia delegation in Philadelphia to drafting some twenty-six to twenty-nine of the Federalist Papers, so instrumental in effecting the Constitution's ratification. His fellow delegate, William Pierce, wrote of Madison that "in the management of every great question he evidently took the lead in the Convention" and that "he always comes forward the best informed Man of any point in debate."¹³²

Following his active role in bringing about the constitution-making assembly, Madison's extraordinary contributions to the Convention lie primarily in three areas: 1) He drafted the Virginia plan, which was to become the agenda of the conference, and hence set out most of the fundamental principles the new government would stand on; 2) he propounded these principles with resolution and erudition on the Convention floor, overall convincingly, and 3) he kept by far the most complete and apparently accurate record of the Convention's proceedings. When all would be said, no other delegate would have had as much say from the beginning about what should and would happen in the Convention and, later, about what actually did happen. And only two

delegates would literally have more to say from the Convention floor itself.

The first delegate to arrive in Philadelphia, Madison immediately set to work, with the other Virginia members as they trickled in, in drawing up a plan upon which it would be proposed that the Convention proceed. Though Edmund Randolph would, as Virginia's Governor and ostensible head of the delegation, present the plan, it was overall the product of Madison's mind. It was the principles of this plan which were ultimately accepted by the Convention as the basis for discussion.¹³³

Although Irving Brant, author of Madison's most complete biography, says that Madison wanted to lay the government on middle ground between a federation of individual sovereign states and a simple, consolidated republic, this was not the same middle ground sought by his friend and likewise Princetonian Oliver Ellsworth, facilitator of Convention compromises. Ellsworth wanted a middle ground that would be sure to protect state interests; Madison wanted one that would ensure a federal government with real power. Above all Madison wanted a two branch legislature with enumerated powers, an executive, a national judiciary, and a federal congressional veto over state laws. In the end he had all but the last of these, and unforeseen to Madison, even this, the federal veto, would ultimately be effected to some degree through the supremacy clause and the federal courts. According to Brant, Madison's "fundamental gift to the Constitution was the concept of national supremacy and local autonomy in a federal republic ruled by the people, with checks and balances to guard against legislative or executive

tyranny and against impetuous legislation. . . . He took the lead in a huge additional transfer both in theory and fact" of sovereign powers from the states to the national government. ¹³⁴

Madison's principles were the combined products of experience and profound study and reflection. Says Charles Meister, "the best read of the Founding Fathers, James Madison was the expert on political structures to whom the delegates to the Constitutional Convention deferred on questions relating to forms of government. . . . His own life was the record of a man struggling between politics as it should be and politics as it is." Clinton Rossiter seconds the notion: "Madison was a combination of learning, experience, purpose, and imagination that not even Adams or Jefferson could have equalled"; he was "the keenest student then living of the causes and consequences of 'faction.'" Brant assesses Madison and Wilson "as the constructive statesmen of the convention. Both had a profound knowledge of public law drawn from the history of it." Finally Walter Mead attests, "in small gatherings, such as the Constitutional Convention, the sheer lucidity of his logic, backed up by his considerable experience in politics and his awesome grasp of the lessons of history and philosophy, made Mr. Madison shine among the most able speakers and brilliant minds. In the distinguished gathering at the Pennsylvania State House, only James Wilson and Gouverneur Morris came close to him in this regard."¹³⁵

Having set forth the Virginia plan, Madison was quick and thorough to protect and promote its principles and provisions from the Convention floor, adding to or modifying them when necessary. According to Brant, "as the work went on, he showed the utmost skill in judging what would

achieve and what would upset the balance between the great departments of government." Rutland credits Madison largely with instilling in the Constitution the principle of majority rule, the direct election of the House of Representatives, the enumeration of congressional powers, the creation of the presidency and national judiciary, provisions for admitting new states, the requirement for state officers to swear an oath to the Constitution and an amendment process that could go forward absent the consent of Congress. Furthermore, it can be assumed that Madison had a hand in important committee work, sitting on the second committee for representation in the House, the committee on slavery and navigation acts, the committee on postponed matters, and the Committee of Style.¹³⁶

All of this is not to say Madison was endowed with unfailing prescience in drafting the American charter. Although he was among the foremost delegates in the early stages of the Convention, he pushed too hard for nationalism. An ardent large-stater, he was intransigent on the question of proportional representation. Arguing adamantly against the New Jersey plan and opposing the "Great Compromise," for a time his influence waned. Only after the Senate representation compromise was concluded did he reassert his leadership. At this stage says Meister, "his strategy was to transfer power away from the Senate, to the executive, the judiciary or the people."¹³⁷

In addition to establishing the assembly's agenda and securing many of the Constitution's republican principles on the floor, Madison was the Convention's unequalled, though unofficial, record keeper. He

voluntarily assumed the responsibility of recording the debates, because, in his own words,

the curiosity I had felt during my researches into the History of the most distinguished Confederacies, particularly those of antiquity, and the deficiency I found in the means of satisfying it more especially in what related to the process, the principles, the reasons, and the anticipations, which prevailed in the formation of them, determined me to preserve as far as I could an exact account of what might pass in the convention whilst executing its trust, with the magnitude of which I was duly impressed.¹³⁸

He sat near the front of the hall in order to hear all that transpired, and was absent no more than "a casual fraction of an hour in any day," so that he "could not have lost a single speech, unless a very short one." At night he wrote out his notes. According to Brant, only Yates' record approaches Madison's for thoroughness, but Yates covers only a short period of the Convention.¹³⁹

James Madison, thus, contributed to virtually every phase of the birth of the U.S. Constitution, from conception to parturition. He promoted the Convention, created its initial plan, argued ceaselessly the principles he espoused, joined in the work of the committees, recorded in detail each turn of events, and ultimately labored vigorously for its ratification. In Madison's own words, he should not be termed "the writer of the Constitution," however, because it "was not like the fabled Goddess of Wisdom, the offspring of a single brain. It ought to be regarded as the work of many heads and many hands."¹⁴⁰

This in mind, Rossiter's lavish praise of Madison is still not altogether unwarranted. Writing in The Grand Convention, he declares

that Madison

was beyond a doubt, the leading spirit and . . . 'most efficient member' in this conclave. His foresight in drafting the Virginia Plan and making it the agenda of the Convention, his willingness to debate great issues and small with courteous and learned intensity, his dozens of suggestions of ways for his colleagues to extricate themselves from thickets, his membership on three of the four essential committees, even perhaps his doggedness in the major struggle for power--these are the solid credentials of the one Framer ¹⁴ who stands, modestly and eternally, first among his splendid peers.

Thus his contribution was unequalled. However, for purposes here, with regard to the ideas and principles of the final document, Madison deserves extra credit. He came to the Convention honed up on relevant historical precedents with which to bolster nearly every point he made. In this regard he and Wilson were the men of ideas of the Convention, among the large states representatives, offset only by the opposing principles of Paterson and Luther Martin that ultimately balanced out the end result.

SUMMARY

In conclusion, with few exceptions, the higher-educated members of the Constitutional Convention fathered the head, heart and much of the body of the document. True, the presence of Washington and Franklin enhanced the Charter's prestige, and the contributions of Roger Sherman, Charles Pinckney, and George Mason, in terms of both "realpolitick" and theory cannot be ignored. But overall those delegates who had been through a formal higher-education process, both as a group and as individuals, make up the men whose ideas and arguments constitute the Constitution.

Educational institution representation among these actual framers is not unlike the institutional representation in the assembly as a whole. Again, among the fourteen men whose performance has been assessed here, Princeton, with its four alumni, contributed the most of the American colleges. As in the Convention as a whole, those educated in Great Britain, with one Scotsman and three Inns of Courters, gave an equal number.

The contribution of the delegates from these sources to the concept and content of the Constitution is enormous. Madison and Wilson are the chief "political philosophers" among them, but their frequent opponents, Paterson and Martin, likewise did much to instill a healthy dose of small-states' republicanism into the Convention's final product. Princetonian Ellsworth (and his Yale colleague, Johnson) stands with Roger Sherman as one of the Convention's Great Compromisers. And the Middle Templars brought to the Convention a legal perspective, practical as well as theoretical, the overall impact of which greatly outweighs the already substantial contributions of Dickinson, Rutledge and C.C. Pinckney taken individually.

The contribution to the Constitution, then, by the Princetonians, Wilson, the Middle Templars, and the others was immense. It remains only to be explained how the academic traditions of eighteenth-century Europe and America influenced the political thinking of the important delegates.

NOTES

1. William Pierce, "Character Sketches of Delegates to the Federal Convention," The Records of the Federal Convention of 1787, vol. 3, edited by Max Farrand (New Haven: Yale University Press, 1911, 1966), 87-97.
2. John J. Reardon, Edmund Randolph: A Biography (New York: Macmillan Publishing Co., 1974), 96, 97.
3. James Madison, Debates in the Federal Convention of 1787, eds. Gaillard Hunt and James Brown Scott (Buffalo, N.Y.: Prometheus Books, 1987), 22-26; Reardon, 98-100.
4. Reardon, 101.
5. Madison, 109-110; Reardon, 104.
6. Madison, 38; Reardon, 102-03.
7. Reardon, 106.
8. Ibid., 106-107.
9. Ibid., 108-110. See Paterson's response to Randolph's motion to adjourn on pages 220-221 below.
10. Ibid., 110-111, citing Farrand, 2:137.
11. Reardon, 111-112.
12. Ibid., 113-116.
13. Ibid., 117-119.
14. Ibid., 119, 120. See Reardon, chap. 11 on ratification process; quotation on 145.
15. Elizabeth P. McCaughey, From Loyalist to Founding Father: The Political Odyssey of William Samuel Johnson (New York: Columbia University Press, 1980), 211, 212; Clinton Rossiter, 1787: The Grand Convention (New York: W.W. Norton & Co., 1987), 250.
16. Farrand, 3:68; Madison to Sparks, 3: 499; George C. Groce, Jr., William Samuel Johnson: A Maker of the Constitution (New York: Columbia University Press, 1937), 138-141.

17. Madison, 139-140, 182-183; McCaughey, 216-217; Groce, 143-44; Margaret Horsnell, "Who Was Who in the Constitutional Convention: A Pictorial Essay of Its Leading Figures," This Constitution 15 (Summer 1987), 41.
18. Groce, 146-147; McCaughey, 220.
19. Madison, 460, 473, 475; Groce, 149-150; Horsnell, 41.
20. Rossiter, 250.
21. Groce, 157; Rossiter, 205.
22. Max M. Mintz, Gouverneur Morris and the American Revolution (Norman, Okla: University of Oklahoma Press, 1970), 176-77; Howard Swiggett, The Extraordinary Mr. Morris (Garden City, NY: Doubleday & Company, Inc., 1952), 114.
23. Mintz, 180, 181; Madison, 273.
24. Madison, 30, 208; Mintz, 182, 185, 186.
25. Mintz, 186-187, 188; Swiggett, 120; Madison, 360-61.
26. Mintz, 192; Swiggett, 125.
27. Mintz, 192-94.
28. Ibid., 194-95.
29. James Madison to Jared Sparks, April 8, 1831, Farrand, 3:499; Morris to Pickering, Dec. 22, 1814, Farrand, 3:420; Mintz, 199; see also, Swiggett, 129.
30. Mintz, 204.
31. Irving Brant, James Madison: Father of the Constitution 1787-1800 (Indianapolis: The Bobbs-Merrill Company, 1950), 156, 158.
32. Rossiter, 248-49.
33. Rossiter, Alexander Hamilton and the Constitution (New York: Harcourt, Brace & World, 1964), 43-44.
34. Christopher Collier and James Lincoln Collier, Decision in Philadelphia: The Constitutional Convention of 1787 (New York: Ballantine Books, 1986), 142; Rossiter, Alexander Hamilton, 43; Walter B. Mead, The United States Constitution: Personalities, Principles and Issues (Columbia, S.C.: University of South Carolina Press, 1987), 61-62. Rossiter says Hamilton departed June 29, "put in an unexplained

appearance August 13," and then left again until around September 6 when he returned until the end of the Convention, The Grand Convention, 165.

35. Madison, 111.
36. Ibid., 115-117.
37. Rossiter, Alexander Hamilton, 45; Madison, 47, 72, 184.
38. Collier, 86, 87.
39. Madison, 142, 148, 150, 520, 538, 539, 555, quotation on 581; Rossiter, Alexander Hamilton, 48.
40. Stuart Gerry Brown, Alexander Hamilton (New York: Washington Square Press, 1967), 38; Robert G. Ferris and James H. Charleton, The Signers of the Constitution (Flagstaff, Arizona: Interpretive Publications, 1986), 173; Johnson quoted in Mead, 61, and Rossiter, Alexander Hamilton, 46; Gouverneur Morris to Robert Walsh, Feb. 5, 1811, in Farrand, 3:418; on Hamilton as an "inexplicable disappointment," see Rossiter, Grand Convention, 252.
41. Robert Ernst, Rufus King: American Federalist (Chapel Hill: University of North Carolina Press, 1968), 92-93, 101.
42. Madison, 197; Ernst, 102-103; Collier, 166.
43. Collier, 166; Madison, 198; Ernst, 103, 108.
44. Madison, 226, 235, 239, 244; Ernst, 105-107.
45. Madison, 358-359, 446, 468; Ernst, 109-110.
46. Madison, 478, 479, 549; Ernst, 111-112.
47. Madison, 496, 497, 542, 543; Ernst, 113.
48. Ernst, 111, 113-114.
49. Brant, 156, 157.
50. Rossiter, Grand Convention, 249.
51. Ernst, 116-117.
52. John Adams, The Works of John Adams, vol. 8, edited by Charles Francis Adams, (Boston, 1875), 549; cited in Samuel Eliot Morison, "Elbridge Gerry, Gentleman-Democrat," New England Quarterly 2 (Jan. 1979), 19; George Athan Billias, Elbridge Gerry: Founding Father and Republican Statesman (New York: McGraw-Hill Book Company, 1976), 153.

53. Billias, 153-54.
54. Ibid., 154-55; Madison, 32.
55. Herbert J. Storing, ed., introduction to "Elbridge Gerry," The Complete Anti-Federalist, vol. II (Chicago: University of Chicago Press, 1981), 5n.
56. Madison, 188, 205, 211.
57. Farrand, 3:104; referred to in Morison, 19; Storing, 5.
58. Rossiter, Grand Convention, 250.
59. Morison, 19.
60. Quotation in Madison, 32; Charles Page Smith, James Wilson: Founding Father 1742-1798 (Chapel Hill, N.C.: University of North Carolina Press, 1956), 219, 222-223; and Geoffrey Seed, James Wilson (Millwood, N.Y.: KTO Press, 1978), 43, 59, 63-64.
61. Smith, 219; Brant, 156-157; Madison, 40, 41-42, 271, 285, 286, 524; Collier, 297, 298.
62. Madison, 107-109, 206, quoting Wilson on 108; Smith, 228, 230-233, 235, 240.
63. Seed, 43, 62, 74; Smith, 225-227, 242.
64. Smith, 224, 247-248, 256, 257. With regard to the impairment of contract clause, however, Smith asserts that Wilson's role can be neither proved nor disproved. Seed supports the notion of Wilson having had a hand in it, 84.
65. Seed, 43, 178.
66. Rossiter, Grand Convention, 247-248; Brant, 156.
67. Smith, 256.
68. Seed, 179, quoting James Bryce, Pennsylvania Magazine of History and Biography (1936), 60:361.
69. Richard Barry, Mr. Rutledge of South Carolina (Freeport, New York: Books for Libraries Press, 1942), 313-17; see also Charles W. Meister, The Founding Fathers (Jefferson, N.C.: Mcfarland & Company, 1987), 285. Collier, 226.
70. Barry, 321-323; see also Meister, 285-286.
71. Barry, 323-325, 326-27.

72. *Ibid.*, 328-30.

73. Barry, 328-332, 334-35. Some writers consider Barry's details of the Rutledge-Sherman relationship highly speculative; I have accordingly tried not to exaggerate here the details of an out-of-Convention compromise on slavery--although informal, "after-hours," discussions and agreements of the type Barry describes in detail assuredly took place. One of Sherman's primary biographer's, Christopher Collier, agrees that Sherman was possibly instrumental in bringing about an agreement with the South Carolinians that South Carolina would help guarantee Connecticut's western reserve if Connecticut would help ward off abolitionists; Christopher Collier, Roger Sherman's Connecticut: Yankee Politics and the American Revolution (Middletown, Connecticut: Wesleyan University Press, 1971), 259; see also James H. Hutson, "Riddles of the Convention," William and Mary Quarterly 64, No. 3 (July 1987) 411-23; Forrest McDonald, E Pluribus Unum (Indianapolis: Liberty Press, 1979), 291-94, and Meister, 286.

74. According to Barry, Wilson was second, and, as a "more literary" version of Roger Sherman, Ellsworth was third, with Randolph and Gorham added after; Barry, 338.

75. Barry, 338-341, 345, 350; see also Meister, 287.

76. Rossiter, Grand Convention, 202; Barry, 350.

77. Meister, 291; Brant, 156; Max Farrand, The Framing of the Constitution of the United States (New Haven: Yale University Press, 1913), 199; Rossiter, Grand Convention, 249; Horsnell, 39; Charles Warren, The Making of the Constitution (Boston: Little, Brown and Company, 1928), 57.

78. Marvin R. Zahniser, Charles Cotesworth Pinckney: Founding Father (Chapel Hill, N.C.: University of North Carolina Press, 1967) 86-88; F.L. Williams, A Founding Family: The Pinckneys of South Carolina (New York: Harcourt, Brace, Jovanovich, 1978), 217.

79. Zahniser, 88; Williams, 259-260; see also Madison, 56, 311.

80. Zahniser, 88-89; see also Madison, 28; Williams, 224.

81. Madison, 445; Zahniser, 90; Williams, 260.

82. Zahniser, 90; Williams, 260, 261; Madison, 467.

83. Zahniser, 91; Williams, 242; Madison, 233, 243, 445.

84. Zahniser, 92-94; Williams, 227-228, 233, 236, 238.

85. Williams, 255, 256; Zahniser, 94-95.

86. Zahniser, 94, 95, 96; Madison, 582.
87. Rossiter, Grand Convention, 110; Milton E. Flower, John Dickinson: Conservative Revolutionary (Charlottesville: University of Virginia Press, 1983), 239.
88. Flower, 240-241.
89. Ibid., 240-242; Madison, 65, 72.
90. Madison, 47-48; Flower, 244-45.
91. Madison, 68, 323; Flower, 245, 247.
92. Madison, 392.
93. Ibid., 47, 66, 70, 72, 144, 407.
94. Ibid., 445.
95. Flower, 160, 161. For a thorough discussion of Dickinson's role in creating the Articles of Confederation, see Merrill Jensen, The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774-1781, Madison: University of Wisconsin Press, 1948.
96. Clinton Rossiter, Grand Convention, 2, 93.
97. Ronald John Lettieri, Connecticut's Young Man of the Revolution: Oliver Ellsworth (Hartford, Ct: The American Revolution Bicentennial Commission of Connecticut, 1978), 65-66; William Garrott Brown, The Life of Oliver Ellsworth (New York: The MacMillan Company, 1905), 118.
98. Lettieri, 66, 67, 69, 72; Madison, 199.
99. Madison, 189; Rossiter, Grand Convention, 250; Brown, 136-138.
100. Brant, 158; Brown, 141-42, 150; Madison, 185, 189, 191-193, 207, 210; Collier, Decision, 174.
101. Rossiter, Grand Convention, 201; Lettieri, 76; see also Brown, 158.
102. Lettieri, 70; Brown, 154; Madison, 442.
103. Paul S. Clarkson and R. Samuel Jett, Luther Martin of Maryland (Baltimore: Johns Hopkins Press, 1970), 72; Rossiter, Grand Convention, 115, 250.

104. Clarkson 75, 81; Collier, Decision, 160; see also Catherine Drinker Bowen, Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787 (Boston: Little, Brown and Company, 1966), 78; Horsnell, 40; Max Farrand, Records, 3:93.

105. Collier, Decision, 159; Clarkson, 78, 79. Clarkson and Jett add, "that he was able to thwart it in its most extreme form, and to reduce it, as we shall see, to a government of limited national powers, is a tribute to his sagacity, his perseverance, and his eloquence." Clarkson and Jett are a trifle eccentric themselves in this emphasis on a large-state, in particular, Virginian conspiracy, a "cleverly planned, smoothly engineered, and almost successful grab for power," for the frustration of which, according to these writers, we owe Martin and his compatriots an unrecognized debt of gratitude; Clarkson, 81, 89.

106. Madison, 88, 90; Clarkson 87.

107. Madison 130, 136.

108. Clarkson, 305; Madison, 174, 175, 176.

109. Farrand, Records, 3:271-72; Clarkson 84.

110. Clarkson and Jett are the exception. In an appendix to their book, they present an extensive defense of Martin in this instance, consistent with the generally apologetic tone they take on his behalf throughout.

111. Madison, 174-175.

112. Clarkson 99, 102; John E. O'Connor, William Paterson: Lawyer and Statesman 1745-1806 (New Brunswick, N.J.: Rutgers University Press, 1979), 152.

113. Clarkson, 99 citing James M. Beck, The Constitution of the United States.

114. Clarkson, 103, 104; Madison, 177-180.

115. Clarkson 107, 111, 113; Madison 252.

116. Madison, 266, 267, 270, 297, 453; Clarkson, 113-14, 117, 119; Horsnell, 40; O'Connor, 146.

117. Madison, 282, 287, 313, 442, 471; Clarkson, 120-21, 125, 127-28, 129, 133-34.

118. Horsnell, 40; Rossiter, Grand Convention, 211-12, 291, 297n. Clarkson, 150.

119. O'Connor, 131.

120. *Ibid.*, 135-136.

121. O'Connor, 138-140; Madison, 81-83.

122. Not all the provisions of the plan were Paterson's. It was created by a loose coalition whose other contributors possibly included David Brearly, Luther Martin, Roger Sherman, and John Lansing. John Dickinson and Robert Yates were also in Paterson's camp on the representation issue, but, according to O'Connor, it was the New Jersey delegate's role to tie together all these men of various interests; O'Connor, 144, 145, 148.

123. O'Connor, 150-153.

124. Madison, 211, 221, 261.

125. *Ibid.*, 225, 226.

126. *Ibid.*, 261.

127. O'Connor, 157; Madison, 262; Rossiter, Grand Convention, 203.

128. Farrand, Records, 3:73; James H. Hutson, ed., Supplement to Max Farrand's the Records of the Federal Convention of 1787 (New Haven: Yale University Press, 1987), 236; O'Connor, 160-161.

129. O'Connor, 160.

130. Rossiter, Grand Convention, 205, 250; Brant, 156.

131. See Brant, 154-155; Rossiter, Grand Convention, 147; Collier, Decision, 33-34.

132. Robert A. Rutland, James Madison: The Founding Father (New York: MacMillan Publishing Company, 1987), 14; Rossiter, Grand Convention, 120, 293 and introduction to The Federalist Papers (New York: Mentor Books, The New American Library of World Literature, Inc., 1961), xi; William Pierce in Farrand, Records, 3:94.

133. Brant, 11, 23; Rutland, 17; Rossiter, Grand Convention, 247.

134. Brant, 11, 12, quotation on 155.

135. Meister, 141; Rossiter, Grand Convention, 39, 150; Brant, 156; Mead, 57-58.

136. Brant, 157; Rutland, 17.

137. For example, on June 13, Madison had supported the appointment of judges by the Senate; on June 18 he preferred executive appointment

with Senate concurrence only, Meister, 150; Rossiter, Grand Convention, 173-179, 204, 210, 220.

138. Madison, preface to Debates, 14; see also Brant, 19.

139. Madison, 14-15; Brant, 19-21.

140. Madison to William Cogswell, 10 March 1834, in Farrand, Records, 3:533.

141. Rossiter, Grand Convention, 247.

CHAPTER VI

HIGHER EDUCATION, THE REAL FRAMERS, AND THE SOURCES OF AMERICAN CONSTITUTIONAL THOUGHT

Nearly one half the members of the legislature of Connecticut are graduates in the College of New Haven--hence the wisdom and stability of her laws. A large proportion of the assemblymen and senators of the State of Massachusetts are graduates in the College of Cambridge--hence are derived the perfection of her constitution and the freedom and dignity of her government.

--Benjamin Rush, August 31, 1785¹

Eighteenth-century Americans were dedicated to the proposition that higher learning should, among other things, produce statesmen. In pursuing this aspect of the higher education mandate, delegates to the Federal Convention, as students, acquired many of the intellectual materials with which they would later construct the United States Constitution. Chapters One and Two identified the primary intellectual sources of the Constitution. Chapter Three showed that higher educational experience loomed large in the backgrounds of Convention delegates. Chapters Four and Five went a step further to illustrate that higher education was specifically an element in the personal histories of those delegates most responsible for the Constitution's framing. This concluding chapter attempts to tie the knot that unites

ideas with men and institutions by showing the means by which the main political thinkers of the Convention were introduced to the principles of republican constitutionalism in the course of their higher educational experience.

Higher education provided colonial Americans a variety of politico-intellectual materials with which to serve the state as well as church. Once understood that republican political ideas were fostered in the colleges and equivalent institutions, as David Robson and others have shown that they were, and that similar political ideas found their way, implicitly or explicitly, into the Constitutional Convention, it remains only to link institution with constitution. That link is provided by the real framers who had higher education. Once again, whatever other forces may have gone into the making of the Constitution--and they were many--higher education played a crucial part. In taking young men in their formative years, when independent thinking had perhaps its greatest opportunity to take hold in them, and giving them a world-view that took political forces into consideration at nearly every turn, eighteenth-century higher education did much to prepare the minds of the men upon whom would devolve a few years hence the unique and daunting responsibility of structuring a new republic.

Higher education did not freeze these men in their tracks. The college educated among the real framers would not stop studying, contemplating and discussing political theory on graduation day. That of course, was only the "commencement." With regard to America's founding, at least some of the political crisis years lay in the future of even the youngest delegate graduates. One does not expect,

therefore, to hear of President Witherspoon handing Madison the Virginia Plan as an addendum to his diploma. However, one can expect, and not be disappointed in the expectation, to find drawn at Princeton, the Inns of Court and other institutions of higher learning, the outlines of constitutional theory that Madison and his colleagues brought to the Convention.

The higher education experiences that made students into political thinkers were not uniform throughout Great Britain and America between 1740-1780 but varied in nature and intensity with the times and institutions. Although approximately one-third of both the higher-educated delegates as a whole and the higher-educated real framers received a substantial part, if not all, of their higher education in Great Britain, the nature of the education the delegates received cannot easily be classified into two neat categories of "British" and "American." Scottish universities, Oxford, the American colleges, and the Inns of Court all provided experiences that were in some ways different from each other and, as part of the larger British-American culture encompassing them all, in some ways much the same. "There are many points of similarity between the Scottish and American Institutions," writes Scottish historian, George Pryde, "and of difference between them and those of England."² The significance of this is illustrated in James Wilson's education at the University of St. Andrews in Scotland more closely resembling the Princeton experience of Madison than it did the London Inns of Court experiences of Dickinson and Rutledge. Indeed, in some respects, Madison's higher learning

experience more nearly approximated Wilson's than it did the higher education experience of his fellow Princetonians.

In the last analysis of delegates whose higher educational background was important for the future Constitution, Princetonians stand out in name and number. In addition, Wilson is of interest for his contribution to the Convention in content and quality and for the Scottish roots of his education that were shared with so many delegates. Finally, the Inns of Court veterans also bear closer examination--again, they were well represented in the Convention, their members tended to make important contributions, and their formal educational experience was different, in some respects more practical, than that of their colleagues trained at the colleges and universities. This in mind, the remaining pages will compare the manner in which members of the Inns, James Wilson, and the delegate alumni of the College of New Jersey were "politicized," "republicanized," and "constitutionalized" in the course of their higher education.

Learning the Law at the Inns of Court

Although the two main political philosophers of the Convention, Madison and Wilson, were to have strong classical and Enlightenment-influenced formal educations, the contributions to the Convention from the common lawyers should not be treated lightly. Many delegates were lawyers (including Wilson), and some of the best of them had been trained at the Inns of Court. As opposed to provincial American attorneys, affiliates of the London Inns expected to obtain a sophisticated legal education and to form associations that would far surpass the experience and training available in the colonies.

"Colonial lawyers were the victims of their physical and economic circumstances," says Trevor Colbourn, "and their training ranged from the six years apprenticeship served by Thomas Jefferson to the six weeks' reading program undertaken by Patrick Henry."³

"Some lawyers were, indeed, self-taught," he adds, "others gave point and direction to their reading by serving an apprenticeship in the office of a leading local attorney. A fortunate few improved on this by studying at one of London's Inns of Court."⁴

As apparent from the review of their contributions to the making of the Constitution in Chapter Five, the delegates educated at the Inns of Court tended to bring a different mindset to the Convention than the philosophical bent of Madison and Wilson. Not that their arguments were devoid of theory, but the Middle Templars showed themselves, above all, to be practical men. John Rutledge and Charles Cotesworth Pinckney, especially, were effective political managers both within the Convention among the delegates and with regard to their constituencies. Dickinson, too, though more prone than Rutledge and Pinckney to call on history and the example of the British constitution to support his arguments, was nevertheless active in hammering out the details of the plan. This practical mix with constitutional theory can in part be attributed to the practical-mixed-with-theoretical nature of an Inns of Court education.

The Inns of Court were the sole means by which the eighteenth-century lawyer could become a member of the English bar. Here students could associate with fellow students, lawyers and judges, and attend "readings" and court cases. In addition they could enhance

their formal education with work in the offices of local solicitors and conveyancers copying legal documents and learning formal pleadings, for which, if successful, they could be promoted to the post of "Special Pleader."⁵

The Inns, according to Charles Cotesworth Pinckney's biographer, Marvin Zahniser, were "where prospective chancery clerks, solicitors, or attorneys gathered to audit lectures, discuss legal questions, and dine with eminent jurists who had been elected benchers." Says Zahniser, "students were expected to capitalize upon their opportunities by visiting court sessions, attending Parliament, discussing legal problems with their learned superiors, and by reading widely in disquisitions on the law."⁶

To become a barrister in the eighteenth century, one had to keep twelve terms at the Inns, pay the appropriate fees, and perform a legal exercise on nine occasions. One kept a term by "eating five dinners in common in the presence of the benchers," or Masters of the Bench, the governors of the Inns. After being called to the bar, a young lawyer further was supposed to attend one of the three superior courts at Westminster and take notes on the proceedings, apparently to validate his new status.⁷

Although the Inns were the means of preferment for those desiring a career in law, they were also an important source for wider studies. Between the fifteenth and nineteenth centuries their curriculum, as such, was broad. Gentlemen frequently sent their sons to the Inns to receive a general education. Of his education at the Inns, Lord Keeper Francis North stated that he read in "arts, history, humanity, and

languages; whereby he became not only a good lawyer but a good historian, politician, mathematician, natural philosopher, and . . . musician in perfection."⁸

The Inns likewise were the center of English literary activity for many generations. Well-known men of letters who attended or lived at the Inns included James Boswell, Samuel Johnson, and Charles Lamb at the Inner Temple; William Congreve, Oliver Goldsmith, William Cowper, Henry Fielding, and Richard Brinsley Sheridan at the Middle Temple; Ben Jonson, Samuel Butler, and Jeremy Bentham at Lincoln's Inn and Francis Bacon, Sir Philip Sidney, and, again, Samuel Johnson at Gray's Inn. The Inns were particularly conducive to drama production, and some of Shakespeare's plays were first performed there.⁹

Despite then what might appear to have been an ideal setting for a young man's education, scholars tend to see the quality of legal training available at the Inns as having dropped during the seventeenth and eighteenth centuries. Colbourn says "Despite their reputation as England's third university, the Inns of Court in the eighteenth century resembled Oxford and Cambridge mainly in their common state of decline." John Ditton says the Inns became places of revelry and that formal instruction fell off. Zahniser adds the "system of training had broken down." Edmund Randolph's father, who had attended the Inns, decided against an English legal education for his son because he apparently felt it had not been worth the trouble for himself. And no less of a renowned jurist than William Blackstone, himself a product of the eighteenth-century Middle Temple, complained that young law students

arrived at the Inns "sudden in the midst of allurements to pleasure" with "no public direction" and "no private assistance."¹⁰

There were no regular lectures or readable textbooks. Indeed, said Blackstone, a young man is "expected to sequester himself from the world, and, by a tedious lonely process, to extract the theory of law from a mass of undigested learning; or else, by an assiduous attendance on the courts, to pick up theory and practice together, sufficient to qualify him for the ordinary run of business." Says Blackstone's biographer, David Lockmiller, "Legal education in England at this period was at a very low ebb."¹¹

But why, if English legal education was so poor, did eighteenth-century Americans send so many of their sons to the Inns (as indeed they did) to be trained in the law? One key to this question may be that which Lockmiller notes: despite its drawbacks, attendance at the Inns was still the only means by which one could be called to the bar.¹² And whatever the system's deficiencies as an educational institution, it was still clearly superior to that which existed in the colonies, especially in the South, from whence came the vast majority of Americans who attended the Inns.

Anton-Hermann Chroust says that "the English-trained lawyer usually had a considerable advantage over his American-trained brethren":

As a rule, he had studied in the chambers of an experienced English barrister; he had attended the Readings and participated in the Moots which were part of the educational program provided by the Inns of Court; he had access to far better law libraries than those existing in America; and he had the opportunity of attending and taking notes in the courts in Westminster, which must be considered to have been the very heart of the common law. It was also at the Inns of Court that many young men from the several colonies met together and formed lasting friendships as well as professional

connections which transcended the traditional colonial 'isolationism' of earlier days.¹³

According to Chroust, English-trained American lawyers quickly achieved eminence at home. He says their professional influence on the colonial bar is unimaginable--"they frequently became the mentors of the next generation of colonial lawyers" and raised considerably the standards of practice among their peers. And their contact with leading English Whigs put many of them at the heart of the fight for independence.¹⁴

American lawyers, then, continued to profit greatly from London-centered legal education, despite occasional comment even by some of them that the Inns had their problems as institutions of higher learning. And American fathers continued to send their sons to England for their higher education. Chroust estimates about 60 Americans as having been educated at the Inns of Court before 1760, more than 115 between 1760 and the Revolution, and about 236 total before 1815. Of these, it is known that about 146 attended the Middle Temple; 43, the Inner Temple; 32, Lincoln's Inn; and 9, Gray's Inn.¹⁵

South Carolina sent the most young men to England--about 74; Virginia sent 49; Maryland, between 29 and 33; Pennsylvania, 23; New York, 23; and Massachusetts, 19. Among the delegates to the Constitutional Convention who studied at the Inns, Southerners also predominated. Two came from South Carolina, one from Virginia, one from Georgia, one from Pennsylvania, and one from Delaware.

Chroust accounts for the much higher number of English-educated lawyers in the South by the facts that 1) Northerners had more available

educational alternatives in their colleges; 2) there was an anti-common law bias in Massachusetts, and 3) Southern gentlemen desired to give their sons the same education given to the sons of English aristocrats. In fact, he notes that, before the Revolution, there was little intellectual intercourse between Northerners and inhabitants of such colonies as South Carolina. He remarks, for instance, that John Rutledge, as well informed as he may be expected to have been, was "apparently completely unaware of the existence of colleges in America prior to his attendance at the Stamp Act Congress in 1765."¹⁶

The important Inns of Court members at the Constitutional Convention brought with them a ready knowledge of English law and constitutionalism. It was Dickinson the lawyer, among so many lawyers, for instance, who in addition to his repeated comparisons between the Convention plans and the British constitution, perceptively pointed out to the delegates that their usage of the term "ex post facto," was technically inaccurate, for Blackstone had noted that the phrase referred strictly to criminal cases.¹⁷ Rutledge and Pinckney, too, had achieved eminence at the bar.

Although it is impossible to have a complete picture of the individual experiences at the Inns of these three Middle Templars, some things pertaining to the development of their constitutional thinking in the course of their legal educations can be ascertained.

Unfortunately, the least is known about John Rutledge's experience in England. He entered the Inns in about 1757 where, it is recognized that over the course of the next three years he made an excellent impression. As a young barrister, he tried two cases while at the

Middle Temple, winning them both--an apparently commendable feat for a new lawyer. In pursuit of a practical political education, he also attended the House of Commons on numerous occasions, where he heard William Pitt, Lord Chatham, speak several times, and once briefly met the English statesman.¹⁸

According to Kenneth Umbreit, a biographer of Supreme Court justices, "the only evidence we have as to the amount of law Rutledge absorbed" at the Inns of Court "is to be found in the very meager reports covering his later judicial labors." These reports, says Umbreit, reveal that "in the few instances where Rutledge did discuss the authorities [of the law], he shows a thorough understanding of what he was doing."¹⁹

Umbreit says that Rutledge's decisions as a member of the judiciary and the favorable impression he made on other lawyers throughout his life indicate that he had studied "to some purpose" at the Inns, but that his chief interest and accomplishment while in London lay in the development of his oratorical skills. It was to this end that he "haunted both houses of Parliament." He later wrote his brother, Edward, while the latter was studying law at the Middle Temple, "reading lectures on oratory will never make you an orator."²⁰ Rutledge was admitted to the English bar in 1760.

Although little more can be ascertained about political influences on Rutledge from the London experiences of Pinckney, what is known about Pinckney does create a fuller picture of the English training of American colonial lawyers. In some ways his experience was least typical of the three important Middle Temple delegates, however, for he

was nearly as much an Oxonian as he was a Middle Templar, and his legal education derived from the university as well as the Inns of Court. In 1764, at about age nineteen, he matriculated at Christ Church, Oxford. Like the Inns, the University was going through a difficult era. Academic standards were not rigid, but, according to Zahniser, Pinckney's college was the "best of a bad lot" and his tutor, Cyril Jackson, was reputed to be appropriately strict.²¹

At Christ Church Pinckney was surrounded by Whig influences--it was a "lonely academic outpost of ministerial Whiggism in predominantly Tory Oxford" supported by "an undercurrent of anti-Hanover feeling among the undergraduates."²²

Among his activities at Oxford, Pinckney attended a series of lectures by William Blackstone on the development of the English legal system, from which the young South Carolinian took four pages of short-hand notes. Blackstone had become a bencher of the Middle Temple just three years before, and his writings on the law already were well-known to American lawyers. In the course of these Oxford lectures, which he had been giving for many years and which were the basis of his famous Commentaries, the learned jurist, says Lockmiller, spoke, inter alia, about the "cumulative character of rights and liberties for men and society, and on the necessity to protect these freedoms collectively."²³

After leaving Oxford for the Temple Pinckney appears to have been a conscientious student. At one point, says historian Frances Williams, "friends in London reported to Charles Cotesworth's mother that he was working too hard," which led to his year's sabbatical in France. Few

other details of his Inns of Court experience are available. Pinckney was admitted to the bar in 1769.²⁴

Perhaps the search for political and constitutional influences in Pinckney's and Rutledge's higher educational experience is less than satisfying. Although these details are corroborative of and certainly do not contradict the thesis that experience at the Inns helped form these men's political minds, they are simply too meager to be highly convincing. The saving grace comes from John Dickinson. Without his letters from England, assumptions concerning political and constitutional influences of London legal training on the American delegates would be tenuous. Says the editor of the letters, Trevor Colbourn, "while well over a hundred Americans studied at the Inns of Court between 1750 and 1775, few recorded their intellectual experiences with the detail Samuel and Mary Dickinson found in their son's correspondence." According to Colbourn these letters "reveal much of [Dickinson's] early political thinking, and they indicate the real influence of his legal studies at the Middle Temple." Thus Dickinson's London correspondence provides a much fuller understanding of the influence of English legal training on the minds of future delegates.²⁵

Among the many insights they provide, the letters reveal that the Young Dickinson enjoyed immensely his time at the Inns of Court; in the course of his stay, 1754-1756, he pronounced England the finest country in the world. His relatively early tenure at the Inns among the delegates, before the Stamp Act crisis of the sixties, means that Anglo-American politics, for the present, would not have detracted from his contentment. But his enjoyment of his circumstances should not

suggest that he was not a serious student--he understood that he had come to learn and he considered London extremely conducive to that end. "It cannot be disputed," he wrote his father, "that more is learnt of mankind here in a month than can be in a year in any other part of the world."²⁶

He arrived feeling the pressure to succeed and he was determined to profit from his stay at the Inns. "I know that everybody's expectations are raised very high of young fellows coming to England," he wrote his father, "they commonly look for something extraordinary for all the expence and trouble that has been bestowed on them. This I may depend on it, will be the case with me." These expectations provided all the more reason to convince the older Dickinson to let him stay longer than originally intended. "In two years I can procure the degree of barrister," the son explained after a few months in the country, and "it will certainly be more to my credit to return with a degree and a recommendation from the Society."²⁷

When father agreed to the longer stay, Dickinson was duly grateful. He showed his gratitude in remarks about how hard he worked at his studies. Even allowing for some exaggeration from a son eager to convince his parents of the correctness of their decision, the letters show that he was a very conscientious student. "I fly to books . . . and every moment is an age till I am immersed in study," he declared to his father. Several weeks later he repeated, "at present I am wholly taken up with reading." And a few months after he again relates, "I rise, eat, read and sleep, and sleeping, reading, eating and rising repeated over and over produce that consumption of time which is called

Life." On another occasion he bemoans an illness that interfered with "a glorious course of study," and still elsewhere mentions that he reads eight hours "every day" and tells his father that he hopes to bring home two or three volumes of legal and chancery reports drawn from the "notes I have taken in Westminster."²⁸

Not only did he study hard, Dickinson was also systematic in his learning. Berating the unmethodical approaches that many of his fellow students took to mastering the law, he detailed to his mother his own organized method, so superior to "undistinguished reading" and "turning over a multitude of books."²⁹

But in the search for signs of early constitutional thinking, the content of Dickinson's studies is more interesting than their style and intensity. He was absorbed by common-law as well as classical and other writers who fed the Anglo-American constitutional tradition. Says Colbourn, "he worked earnestly at his studies of Coke, Plowden, and Salkeld. He was well informed on the contributions of John Hampden and Sir John Holt." In addition, "he maintained his classical interests and continued to read Tacitus, Cicero, and Sallust, read Bolingbroke and Rapin for the historical context of his legal heroes, and kept up with English and Pennsylvania newspapers to stay abreast of contemporary politics." In this way notes the editor, Dickinson "acquired constitutional and historical information of enormous relevance to his later political career."³⁰

Dickinson's references to the content of his reading come in various guises. His letters frequently cite passages from the English poets, for instances, Milton, Pope and Thomas Gray. And on one occasion

he explains how a fellow American law student, who considered himself something of a classicist, was surprised to find that Dickinson had been reading Sallust and had read Tacitus, "this winter." When the two debated "Caesar's famous speech for the conspirators," Dickinson claims to have "politely" beaten him on every point.³¹

More often references to Dickinson's reading materials surface in the context of his many discussions of English politics. For example, in declaring his vote of confidence that King George II would sustain "this people and Constitution," Dickinson draws on Bolingbroke and Rapin for support.³² This statement came out of a lengthy discussion of the pitfalls of standing armies, as Dickinson and all Englishmen were at the time experiencing the presence of German soldiers in Great Britain. The young man's comments on the matter to his mother readily reveal his budding constitutionalism.

The German soldiers, "if they stay here," he explained, "must be very disagreeable to all men who value their liberties and Constitution by setting a precedent, which in cases of the Crown has ever been found an immutable law, for the increase of regal power, the strides of which since the [Glorious] Revolution have been gigantick."³³

Already Dickinson displayed an awareness of the dangers to constitutional government from the unfettered executive: "When concessions are made to princes," he stated, "tis as ridiculous to think of stopping as for a master of a ship to guess at the depth of water in an ebb tide, which every moment decreases till he is convinced of his folly by running aground."³⁴ At length the young man concluded, "I think a moderate acquaintance with the English history will teach one

this truth, and also that most of our civil wars have been given up singly or wink'd at in Parliament, so dangerous is what some people call complaisance and trust in their prince."³⁵

Having said his piece, Dickinson expressed a desire to relieve his mother of any concern that his political education had displaced his legal education, for he apologizes, "I hope my Honour'd mother will excuse my politicks if she cant approve them, and will forgive my dabbling in them, as the English Constitution and the English laws are strictly united."³⁶

As Colbourn has pointed out elsewhere, this period of his life also reveals Dickinson's absorption with history, the evidence of which he would carry over into the Convention. In England, he "studied antiquity at first hand," notes the editor. For example, in one letter to his father, he exults, "I tread the walks frequented by the Antient Sages of the Law. Perhaps I study in the chambers where a Coke or Plowden has meditated." So impressed was he on this point that he exclaimed, "I am struck with veneration, and when I read their works, by these familiarising reflections I almost seem to converse with them." When he further viewed the place where Hampden and Holt "opposed encroaching Power, and supported declining Justice," he was "filled with awe and reverence."³⁷

So formal, rigorous study was important to Dickinson. However, if anyone appreciated that the benefits of an Inns of Court education went well beyond reading, it was he. "I now have an opportunity of seeing and hearing the most learned lawyers and the finest speakers," he wrote his father. "Since my last, I have heard some of the greatest men in

England, perhaps in the world." He then listed many of the venerable lawyers and government officials whom he had heard speak.³⁸

Later, with even greater enthusiasm, he pronounced:

As to the particular advantages in my profession, they are so many and so great that it would be needless to recount them. If the adding practice to study will be more likely to fix the law strongly and clearly in the memory, if the seeing and hearing the finest speakers at the barr [sic] can contribute anything to improving and polishing one's address, and if frequent conversations on your studies with numbers engaged in the same will instruct one in controversy, then those advantages are to be acquired here.³⁹

On the same day he wrote to his mother, "I now have an opportunity of joining reading and study together, from which I have no doubt of gathering the finest fruits, if they have time to ripen." But the following year he pragmatically suggested that "laws in themselves certainly do not make men happy" and "all the law of Coke and the eloquence of Cicero can never influence men who don't understand you, or if they do, were determined in their opinions before they heard you."⁴⁰

One particular experience that was to leave a keen impression on the young man's mind was his maiden visit to the House of Lords. Delighted with the experience, Dickinson described his initial view of the Peers to his father: "When I considered the power with which they were vested, and that they were the supreme judicature of my country, I could not forbear looking on them with veneration." The deep impression appears to have stayed with him, for years later in the Constitutional Convention, he urged that the delegates "assimilate" the Senate "as near as may be to the House of Lords in England," and, reported Madison, "he repeated his warm eulogiums on the British Constitution."⁴¹

Other passages of the letters also illustrate the development of Dickinson's republican and constitutional principles during this era. At one point he expresses a concern to his father over the Pennsylvania courts frequently assuming "the power of legislation." In other instances he bemoans the decay of that essence of republicanism, public virtue. "It is grown a vice here to be virtuous," he declares, and, again, it is "impossible for publick dignity and security to exist without private virtue and honesty." A year and a half later he laments, "how soon do men lose sight of the publick good when under the influence of private passion." On another occasion, perhaps foreshadowing in some measure the anti-slavery position he would take in the Convention, he determines that Americans in general are rude and ill suited to their experience in London, because they are so used to commanding slaves.⁴²

John Dickinson's correspondence with his parents thus illustrates how a formal education at the eighteenth-century Inns of Court provided American lawyers and future delegates with a mix of politico-legal theory and practical experience that would serve them well in the Convention. In the end, as Colbourn says, "Dickinson found it impossible to divorce his legal education from his political education." Seeing for himself the seeds of crisis being sown in London politics, "the more he learned of the ancient principles of the English Constitution as purveyed by Coke and the Whig lawyers of the later seventeenth century, the more obvious was it that 'the birthright of Englishmen' was now in some jeopardy." In assessing the overall impact of higher education on John Dickinson, perhaps the young student,

himself, best summed up his view of the importance of his Inns of Court experience. Simply put, he told his father in an early letter, "London is the place where a person may learn Truth."⁴³ How that truth was applied in America was a different matter.

James Wilson and the University of St. Andrews

Another prominent lawyer at the Constitutional Convention, but one who was not trained at the Inns of Court, was James Wilson. Wilson is important to the present study not only for the political philosophy which he brought to the floor, but because his higher education bridges that of the Templars and the Princetonians, especially Madison. The Scottish Pennsylvanian studied law under Dickinson, and became one of America's leading lawyers and legal scholars; he was a close friend of Rutledge; and he was the intellectual and, generally, political ally of Madison on the Convention floor. His formal higher educational background was similar to that of Madison in that it derived from the intellectual forces growing out of the eighteenth-century Scottish universities, and though the known details of his particular educational experience are too few to give full satisfaction in this study, they offer some strong clues as to where James Wilson's constitutional thinking began.

James Wilson's formal institutional higher education took place between the years 1757-65 at the University of St. Andrews in Scotland. He arrived at the university during a period of its revitalization following years of neglect. After an illustrious beginning in medieval times, the colleges of St. Andrews had become moribund from financial woes and the fact that the town, too, was in decline--such that in 1727

Daniel Defoe described them as "a grass-grown place of desolation." In 1747, however, the school was rescued from the grave by an act of Parliament combining the various colleges into a university. Provost James Murchison contributed to the revival by bringing to the university in the 1750s a group of excellent scholars, including natural philosopher William Wilkie and, to fill the chair of logic and rhetoric, historian Robert Watson.⁴⁴

Since the end of the previous century, according to Ronald Cant, historian of the university, admissions requirements to the colleges had included students proving "their proficiency in Latin and Greek." These subjects, in turn, especially Greek, became the staple of the curriculum for many years to come. Shortly before Wilson's arrival, Murchison had ended the regenting system in which faculty taught several subjects and replaced it with one in which professors specialized. Faculty of the "united college" included a principal, a professor of Greek, a professor of "Humanity," a professor of Civil History, professors of mathematics and medicine, and three professors of philosophy, to include the professor of natural and "experimental" philosophy, the professor of logic, rhetoric, and metaphysics, and a professor of Ethics and "Pneumatics." According to Smith, other subjects in the curriculum included moral and political philosophy.⁴⁵

Although there exists no known surviving account of Wilson's educational experience, Geoffrey Seed indicates that in addition to course work, "from the extent of his library borrowings of works on ancient history it seems possible that he attended also the optional classes of the recently appointed professor of civil history."⁴⁶ In

addition, there is little question that Wilson learned his classical texts well, for, shortly after his arrival in America, and with little time intervening since the discontinuance of his formal studies, the College of Philadelphia appointed him instructor in Latin and awarded him an honorary M.A., "in consideration of his merit and his having had a regular education in the universities of Scotland."⁴⁷

It is also clear that Wilson was touched constantly and thoroughly by the strands of the Enlightenment while at the university. From the earliest 1700s, says Cant, St. Andrews was "well aware of the 'great improvements made in late years in Natural Philosophy and Mathematics by means of experiments'" and the curriculum was designed accordingly. The new faculty members enlisted by Murchison came from Edinburgh, "the capital of the new Enlightenment," declares Smith, and "these men helped to draw St. Andrews into the most exciting currents of the Scottish Renaissance." Concepts taught at the university drew on Locke, Reid, Hutcheson, Hume, and Ferguson, among other Enlightenment thinkers whose influence contributed to American republicanism and constitutionalism.⁴⁸

At the heart of Wilson's thinking developed at the University was Scottish "common-sense" philosophy, foreshadowed by Francis Hutcheson and epitomized in the writings of Thomas Reid, a Presbyterian clergyman who occupied the chairs of moral philosophy at both the universities of Glasgow and Aberdeen. Reid and his followers argued that, despite the contentions of skeptics (like his friend David Hume) that connections between ideas and external reality are not demonstrable, one should assume that the human mind does know actual objects, can reliably ascertain causes and effects, and that the dictates of conscience are

likewise true and reliable. What is more, these attributes of the human mind are not confined to the educated or wealthy. Reid's philosophy was democratic insofar as it affirmed that the capacity to perceive and to act correctly on those perceptions is common to humankind. The political implications of this "common sense" thinking, suggesting the possibilities for the development of a political "science," were further developed by Hume, Adam Ferguson, Dugald Stewart and Lord Kames.⁴⁹

"The influence of the Scottish common-sense philosophy which Wilson absorbed in his youth remained with him throughout his life," according to Seed, and "the uniqueness of Wilson's approach to American political problems almost certainly derives from his Scottish roots." His consistent and persistent attachment to and defense of the "people" from the floor of the Constitutional Convention provide ample evidence that he had indeed adopted the principles of this school of thought. "Common sense" implies, for example, that "first principles" are intuitive or "self-evident," available to all persons everywhere, and thus, in Wilson's words, they "render men capable of conducting their own affairs."⁵⁰

Following his studies in the "Arts" curriculum at St. Andrews, Wilson studied divinity for a year at St. Mary's College until the death of his father compelled him to withdraw. He then served for a short time as a tutor to a gentleman's family before coming to America. A number of historians have indicated that Wilson also studied at the universities in Edinburgh and Glasgow, but Seed says there are no records of his attendance at either. At any rate, he came to the

colonies having acquired as good a formal education as an American of the day could generally expect to have. And when he undertook his legal studies with Dickinson, Seed says he did so "with intense energy and meticulous care."⁵¹

His legal studies made Wilson a bridge in terms of higher education between those trained at the Inns of Court and the Princetonians, especially those trained under Witherspoon. Although he was not trained at the Inns, Wilson's tutorial in law at the hands of Dickinson occurred under one of the most prominent Middle Templars to serve the American Revolutionary and constitutional cause and Dickinson likely influenced Wilson's attitude towards Great Britain. Seed asserts that, in some degree, Wilson's "reputation as a political thinker and legal scholar was based on his ability to assimilate the philosophical scholarship of St. Andrews with the legal scholarship of Philadelphia--a combination that was unique in the America of his day."⁵²

We cannot pronounce with certainty on the contribution of his formal education to Wilson's political principles. But it is clear that he had an excellent formal higher education for his place and time which appears to have included extensive study of history, the classics, political thought, Presbyterian theology and Scottish Enlightenment philosophy. In this background he would have found a bond with delegates trained at the Presbyterian College of New Jersey, especially Madison, and would discover the seeds of his ultimate political and constitutional thinking.

Political Thought at the College of New Jersey

Perhaps the most important institution of higher education for its contribution to the Constitution, the College of New Jersey at Princeton conveyed political principles to future Convention delegates in several ways: through lectures and speeches from faculty and administrators, through outside reading of library books, often recommended or assigned by instructors, and through such extra-curricular activities as commencement exercises and student debating societies.⁵³

To fully understand these politicizing forces, the importance of the eighteenth-century college president must be underscored. Although then as now he was often occupied with administrative matters, he also took direct part in the pedagogic role of the school, teaching courses, and interacting regularly with the comparatively small number of students--some for whom he became a mentor. Before the arrival of the most famous colonial Princeton president, John Witherspoon, the New Jersey College had had a number of chief administrators who would touch the minds of future Convention delegates.

Samuel Davies assumed the Princeton presidency in 1759, the year that William Paterson entered the College. Paterson graduated, however, under Davies' successor, Samuel Finley. Finley served until 1766 after which followed a two-year interim without a president, pending the coming of Witherspoon. "New Light" Presbyterian ministers both, Davies had earlier led, in the name of natural and legal rights, a successful campaign for toleration of religious dissenters in Virginia, and Finley, whose studies indirectly emanated from the University of Edinburgh, had previously established a Presbyterian academy in Maryland. It was

Davies whom Paterson would have heard exhort the students to "imbibe a publick spirit" and "Be . . . Servants of your Country" and who had preached that the French and Indian War should be fought "to secure the inestimable Blessings of Liberty, British Liberty." Finley, likewise railing against French aggressors in North America, proclaimed in 1757 that the French threatened to rob the colonists of their liberties and would substitute "arbitrary Government for Law and Equity."⁵⁴

Although Davies' class lectures have not survived, the notes of one of Princeton's 1765 graduates reveal the political content of some of Finley's, part of which at least are based on Locke. And Witherspoon's lectures, which will be treated in detail later, held a host of implications for future constitution makers.

The lectures of the presidents and faculty members are important, for during the years that Convention delegates would have been attending the College of New Jersey, as Robson says, "the real political education of Princeton's students took place mainly in the classroom." Through the 1760s and 1770s a steady diet of classics, as well as courses in moral philosophy, history, and chronology, had much to say to students, directly and indirectly, about political philosophy. Curricular offerings that provided such stuff as constitutions are made on included studies of Cicero, Demosthenes, Xenophon, Thucydides, Herodotus, Livy, Pufendorf, Kames, Grotius, Burlamaqui, Harrington, Locke, Sidney, Montesquieu, Ferguson and Hutcheson.⁵⁵

In addition to faculty lectures, a second important source of knowledge on governments and politics for students was the college library. College of New Jersey library holdings in 1760 and those

recommended by Witherspoon for the library in 1768 included a great number of those works influential in the development of American constitutional thought. The 1760 library included Plutarch, Livy, Cicero, and Tacitus, among the classics; Sidney, Trenchard and Gordon, and Hoadly, among the Commonwealth Whigs; Locke, and Burgh from the Enlightenment; Neal and Prince, among Puritan writers; and, among historians not otherwise classified, Virgil, Thucydides, Rapin-Thoyras, Burnet and Temple. In addition the library contained works by Grotius and Pufendorf, and as of 1764, Milton. Witherspoon's list, most titles on which became part of the library in 1768, further added works by Montesquieu, Burlamaqui, Harrington, Hutcheson, Robertson, Ferguson, Montagu, and Kames. The conspicuous absence from the Princeton holdings were common law treatises, of which the New Jersey College library, as opposed to Harvard, contained none.⁵⁶

Among extra-curricular activities that played a role in creating politically-minded students, the most influential were debating societies and commencement exercises. Convention members would take an active part in these. Paterson participated in both. At graduation he delivered a "Clio-philic" oration, a term he contrived, evidently inspired by the muse of history. The term caught on: two rival debating societies were founded at Princeton in 1765, the Plain Dealing Society, later to become after a short disbandment the American Whig Society, and the Well Meaning Club, to become the Clio-philic Society. Future Convention delegates, including Paterson and Luther Martin, had a hand in their founding. Oliver Ellsworth and Madison were also early members. Although politics were not the raison d'être of these

societies, questions of a political nature often became topics for discussion in these clubs, as in Paterson's "Oration on the Degeneracy of the Times," thought to have been delivered before the Cliosophes.⁵⁷

Commencement exercises provided an opportunity for students to give public orations, the content of which, if known, would provide more direct evidence of students' thoughts on matters of a political nature. Unfortunately, as with most of Princeton's institutional records, few survived the destruction that accompanied the Revolutionary War and the 1802 burning of Nassau Hall. The topics and titles of many are known, however. They included in 1765, "patriotism," "liberty," "economy," "frugality," and "industry," and in 1766, "liberty" and "patriotism."

In 1768 commencement attendees heard students proclaim that "it is in the interest of any nation, to have the trade of its new countries, as free from embarrassments as possible," and "it is lawful for every man, and in many cases, his indispensable duty, to hazard his life in defense of his civil liberty." The 1769 commencement, where John Dickinson was presented with his honorary LL.D., heard expounded "the Present State of Political Affairs." Perhaps more telling than all of these were the graduation speeches of 1772, "A Mixed Monarchy is the best form of Government," "The Advantages of Political Liberty," and "Political Jealousy is a Laudable Passion."⁵⁸

Although the arrival of John Witherspoon, coinciding with increased tensions between Great Britain and the colonies, would intensify the politicization of students, it should not be supposed that the education of earlier students was irrelevant to the development of their constitutional thought. Among the important framers of the

Constitution, three of the four Princetonians graduated before Witherspoon left Scotland. Paterson graduated in 1763 and Martin and Ellsworth in 1766, the year that Paterson received his Princeton master's degree. Each of these men began to some extent to think like a republican during his student days.

Fortunately for this study, the direct impact of Princeton's politicizing forces on the Convention delegates is not left entirely to speculation, for a great body of Paterson's personal college papers have survived, including a 268-page commonplace book dated the year of his graduation. These papers reveal something of the formation of the political mind of the most ardent proponent, if not the author of the New Jersey plan and, of course, imply something of the nature of a Princeton education for his contemporary delegates, Ellsworth and Martin, as well.

Constitutional Thought in the Paterson Papers

Paterson's college papers include his commonplace book, a number of essays, and some of what appear to be the texts of speeches he gave before the Cliosophic Society. Combined, these sources give a fair indication of Paterson's exposure to a number of ideas and issues that would eventually underlie the creation of the Constitution. Among other things, they explicate the purposes of government, the threats to good government, means by which to preserve good government, and preferred forms of good government. They include references to balanced and separated constitutional powers, even early hints of federalism.

The commonplace book is perhaps the most important of Paterson's surviving college work. Amid a host of literary citations and aphorisms

on manners and style for the would-be gentleman, Paterson's commonplace book contains maxims of political wisdom and extensive passages of history that, however fortuitously, would prove relevant to the cause of the Constitution. History comprises the bulk of the pertinent writing; one forty-seven page sequence alone from his book consists of Paterson's rendition of English history, from the Roman conquest through the fourteenth century, in which he traces the evolving forms of the British government from monarchy under the primitive Britons to "mixed limited monarchy again under the English."⁵⁹

"To understand rightly what a Nation is, one should previously learn what it has been," Paterson culled from Montesquieu's Persian Letters. The young undergraduate apparently approached the study of history expecting to learn "lessons" from the past. Quoting from Wharton's True Briton, he wrote, "How noble and useful a Study is that of History which . . . presents the Rise, Fortunes and Catastrophes of the most eminent Persons; and at the same Time that it records the good or bad Actions of past ages, instructs the present to imitate the first, and avoid the last."⁶⁰

At the broadest level, Paterson's surviving college work reveals the passages pertaining to politics perceived by him as important to be those probing the virtues of patriotism and the blessings of liberty. For instance, in a sketch of the life of Cicero he recorded, "it must be allowed in Praise of Cicero, that he was a Lover of Glory, and of his Country" who, among other things, "often faced Death in the Midst of Rome for the Defence of his Country; and at length he nobly laid down his Life in the glorious Cause." Paterson rated the Roman patriot

"among the greatest Men that appeared towards the Decline of the Republic"--greater than Pompey, Caesar and Cato.⁶¹

That Cicero should emerge so nobly placed the Roman nobleman squarely in the Roman stereotype that Paterson borrowed from Charles Rollin's preface to his Roman history: "The essence of a Roman was the love of liberty and the love of his country," Rollin wrote and Paterson recorded, "--Add to these two characters the desire of glory and thirst of dominion, and you have a Roman compleat."⁶²

Elsewhere in what appears to be a college composition, Paterson becomes more specific. A two-page essay on the Romans notes that these early republicans, through "a generous and ardent love of their country, and a firm attachment to their constitution, surmounted every obstacle which the neighboring nations, envious of their growing power, opposed to them." Noted the future Supreme Court Justice, "the safety and glory of their country were the laws," to which Romans were devoted. Though "the petty nations of Italy arose in arms" to conquer Rome, he added, they failed, for "they suffered their strength to be divided, and their interests to clash. They were split into factions and each aimed at superiority."⁶³

But in Paterson's book (literally) the Romans were not to be outdone by English parliamentarians whom the young man, citing Smollett, noted as having, during the Civil War, "sought only to ascertain the liberties of the nation." And the Dutch, whom Madison and historically-minded delegates would later place neatly in the republican tradition, Paterson extracted from Voltaire as hailing from "a Country the richest in Liberty, Industry and Wealth of the whole Globe."⁶⁴

Notions of the "security of liberty," then, and of securing the "blessings of liberty," that the framers of both the Articles of Confederation and the Constitution would take as among their chief objects, were concepts familiar to Paterson and young Princetonians before the Revolution really began. "Liberty is one of the noblest Gifts of God, the Foundation of Property, the Source of Happiness," Paterson quoted from Bolingbroke's friend Jonathan Swift, ". . . Life itself without Liberty is not only a Burden to a generous Mind, but even a Reproach to Human Nature."⁶⁵

In addition to paying general homage to the spirit of liberty, however, Paterson's college papers catalogue the qualities of statesmen and politicians. As in the sketch of Cicero, he frequently summarized and assessed the patent characteristics of past public figures, including Julius Caesar, Mark Antony, Martin Luther, Charles XII of Sweden, Marshal Turenne of France, and Louis XIV. From these the young man gleaned warnings as to the dangers of abusive executive power long before he would share the burden of making a government that would keep such power in check. Of Charles XII, for example, Paterson wrote that, as in Caesar, "ambition burned rather too strongly in him." Likewise Louis XIV, "though he did not extend his Conquests so far as Alexander or Caesar, yet, it is probable, was not less ambitious."⁶⁶

These sketches sometimes served to make larger comments on political history, as in Paterson's description of Antony which recalled the republican idea that "virtue" must underlie a nation's political stability and that loss of public virtue accompanied the fall of republican Rome: "Perhaps he would have been more virtuous," wrote

Paterson, "if his country had been more so; but real Virtue was banished from Rome at the time when he appeared on the Stage. He was a very debauched Man in a very debauched age."⁶⁷

In addition to his sketches of past prominent persons, Paterson divined statesmanlike character through political adages and historical homilies. "He that is unable to govern himself, can never be fit to govern others," he quoted from non-conformist cleric John Mason's Treatise on Self-Knowledge (1745), "for he hath not the true Spirit of Government." Another writer provided Paterson with a description of "the character of a true politician," which could easily have served as a model for college students with ambitions for public service. Such a politician, Paterson wrote, "may be justly defined to be, a man of probity, conversant in history and law, particularly the law of nations; perfectly understanding the present state of affairs at home, as well as abroad; and, above all, acquainted with the humour of different nations, and their manner of thinking."⁶⁸

Other political features of Paterson's college papers include snippets of information elucidating threats to good government and the statesman's responsibilities in the face of such threats. The Cicero sketch evaluates the psychological effects on the statesman of a waning republic: The Roman orator, "who had made so great a Figure in his Consulate, was growing timorous and irresolute towards the Extinction of the Republic," wrote Paterson. "He seemed to have lost one half of his Existence, when he saw the liberties of his country subverted."⁶⁹

One of the threats to liberty, the evasion of which would require a well-constituted state, lay in the preponderance and nature of law.

"A multiplicity of laws is as evident a token of the corruption of a state, as a diversity of medicines is of the distempers of bodies," the young man copied from Andrew Ramsay's Les voyages de Cyrus (1728). Likewise, quoting Swift, he noted, "too many Laws are a snare, too few are a weakness in Government, too gentle are not obeyed, and too strict and severe are seldom executed." And borrowing from the great Greek lawgiver, Solon, he noted that a good government requires "punishments and rewards."⁷⁰

When threats to good government become apparent, Paterson's papers are not loath to suggest the "true politician's" responsibilities. When he would later insist in the Federal Convention that the delegates "must follow the people," perhaps, however unconsciously, he was harkening back to the Montesquieu adage he had copied in his commonplace book, that the "English Nobleman should be a strenuous Assertor of the Privileges of the People, because he is perpetually entrusted with the Care of them." Perhaps even more significant, however, are the implications for balanced government that the rest of this adage suggests--for, according to Montesquieu, the nobleman should be "at the same time, desirous to preserve the just Rights of the Crown, because it is the source from which his Honour is derived."⁷¹

Furthermore, a nascent federalism might be perceived in Paterson's scribblings. For instance, he quotes Ramsay as saying that, "a noble politician ought to provide not only for the liberty of his own state, but for the safety of all neighboring ones." And maybe the New Jersey delegate's insistence in the Convention on preserving the power of individual states found its roots in part in the conservatism manifest

in a copied Voltaire citation: "A great empire is never formed but out of several petty states. This being the work of time, management and courage, there can be no greater proof of antiquity."⁷²

The most important of Paterson's college writings, for their implications for American constitutionalism, are those that speak, either descriptively or prescriptively, to the forms of governments. Some of the young man's papers were very relevant in this regard. Citing from the Gentleman's Magazine, Paterson recorded the current political wisdom that "the conveniences of an absolute or monarchical Government are Unanimity, Secrecy, and Dispatch." However, "the Blessings of a limited Monarchy are Liberty in Person and Property. And a Happiness of transmitting it to Posterity, a Felicity which Strangers to its Pleasures know not of."⁷³

Several pages later he recorded an analysis of the Genoese and Polish constitutions:

The legislative Power of the Genoese is properly an Oligarchy, consisting of the Doge, who is . . . elected every two years; he is assisted by twelve of the principal Senators, called the Signiory; who, with four hundred of the Nobility and principal Citizens, elected annually out of the Freemen, compose the great Senate, to which is committed the Administration of the Government.

He noted the Genoese position on standing armies:

The common Forces of the Republic are five thousand Men, which can be immediately augmented to twenty thousand; though upon the utmost necessity, the Republic has seen 100,000 of her Subjects in Arms,⁷⁴ either for the Preservation or the Recovery of their Liberties.

Of the Polish government Paterson wrote:

The Constitution of Poland is a mixed Monarchy, inclining to a Democracy; which makes it frequently called a Republic. Every Province has its particular or provincial Diet, which make Laws for the respective Provinces: the Senate consists of the Bishops, Pala-

tines, Castellans, and ten great Officers of the Crown; who are consulted by his Majesty in all Acts of State: but the legislative Power is lodged in the grand Diet, consisting of the King; the Senate; and the Nuncios, or Deputies of every Palatinak or Country; who ought, by their Constitution, to assemble once in three Years, and their Session to continue only for six weeks; in which the Opposition of a single Member, can easily defeat the most salutary Measures concerted for the Welfare and Security of the Public.⁷⁵

These passages reveal the beginnings of Paterson's thinking in terms of a republican constitution. Although the young man's selection of them for inclusion in his book was unwitting as to his future role at the Federal Convention, they show that his understanding of what comprised a healthy constitution had begun by the end of his undergraduate education.

Although it cannot be said that Paterson went directly back to his college papers to prepare for his role in the Convention, he did borrow on occasion from earlier writings, including college materials, to draft speeches and papers at a later date. One speech among his early political essays provides a case in point. Apparently from the 1760s or seventies, and titled "Address on Dissolution of Nations," it draws at least one reference from Paterson's commonplace book, and in turn serves as the basis for a later discourse. "The rise and fall of empires compose the most curious and interesting part of history," he begins.⁷⁶

The oration shows a maturing constitutional thinking. "In a state limited like the British, it is of the utmost moment, to preserve the balance of power between the several branches of government," Paterson writes, "and as the bounds assigned to each are accurately ascertained, not to suffer the smallest encroachment, as it will be an inlet to tyranny. . . . the scales must be kept in a poize." He continues,

"though perhaps factions will perpetually spring up in every government friendly to liberty, yet they should never be suffered to get so far ahead, as to destroy or even endanger any part of the legislative body."⁷⁷

The constitution of a state should be inviolable, Paterson posits--"Nothing is more unwise than so far to give way to popular clamour as to make a breach in the constitution." Standing armies in particular are a threat to the stability of the state, as are extremes in the wealth and poverty of its citizens. According to Paterson, recognition of the problems caused by the latter of these conditions gave rise to remedial attempts in Sparta and Rome.⁷⁸

As his thoughts continue, in a manifest borrowing from his commonplace book, Paterson declares "another source of calamity and mark of declension is multiplicity of laws; 'as evident a token, say politicians, of corruption in states, as diversity of medicine is of distempers in a body'"--a direct quote from his Ramsay notes cited earlier.⁷⁹

But not only did Paterson derive at least some of the constitutional theory expounded in this speech from his past, including college studies, he also used this speech as the basis of an address he drafted at a later date after the "United States" and the 1787 Constitution, to which it refers, had come into being. "The rise and progress, the decline and fall of nations compose the most curious, important, and interesting part of history," begins the second speech. And later, "in a government, like that of the United States, it is of

primary importance to preserve the balance of power among its component parts"⁸⁰

The speech has apparently been prepared for an academic audience, very possibly the Princeton Cliosophic Society with whom Paterson maintained ties, for in it, reminiscent of Davies' "cherish a publick spirit" speech, he declares, "Fellow students and youth of the present day, born and rocked in the cradle of American independence, let us cherish the spirit that gave it birth; let us cling round the constitution of our country as the ark of safety and palladium of our liberties."⁸¹ Numerous other passages of the later speech are direct borrowings from the New Jersey delegate's speech of many years earlier.

William Paterson, then, began to think like a constitutionalist during his college days, and the seeds of constitutional thought apparent in his college papers can be traced through his pre-revolutionary and post-Constitution writings. His biographer agrees that, however hard it is to define the influence of a formal higher education on America's Revolutionary leaders, Paterson's case is exceptional. "The positions he took and the arguments he phrased during the Revolution, in the crisis of the Confederation, and even in the political battles of the 1790s," says O'Connor, "can almost all be found in embryonic form in his college notes and essays."⁸²

A Princeton education in the 1760s, therefore, started interested students thinking about ideas that would serve as the basis of the Constitution. Faculty speeches and lectures, the curriculum, library holdings, extra-curricular activities, and especially Paterson's papers, evince that during the years that Paterson, Martin, and Ellsworth

attended the College of New Jersey, exposure to republican constitutional principles was common. With John Witherspoon's assumption of the college presidency, an era of even more intensive republicanizing of Princeton students would begin.

Political Thought at Princeton after 1768: Witherspoon and Madison

The only member of the clergy to sign the Declaration of Independence, John Witherspoon brought Scottish enlightenment to the College of New Jersey and hence, in large measure, to James Madison. Not that there were not ties between Scotland and Princeton before the parson's arrival--The college and the American Presbyterian academies that fed it, one of which Princeton President Finley had founded, often drew their inspiration, philosophy and faculty members from the sponsoring religion's Scottish stronghold. Madison too had ties to Scotland; he had had a Scottish tutor in Donald Robertson from age eleven to sixteen.⁸³ But when Witherspoon became Madison's mentor, he passed on to the young scholar principles of republican philosophy and the Scottish Enlightenment that would importantly affect Madison's maturing political mind.

Born in Gifford village, fourteen miles from Edinburgh in 1723, Witherspoon was the child of a parish minister who provided well for his son's education. At age thirteen, the future college president entered the University of Edinburgh, already possessing an excellent knowledge of Latin, Greek, and French. Unfortunately the details of his education are lost, for few of Witherspoon's personal papers survived the destruction of the contents of his Nassau Hall office during the Revolution and he later ordered his wife to destroy much of what

remained. His university roommate, Alexander Carlyle, did, however, leave some indication of the nature of their higher education experience.⁸⁴

According to Carlyle's record, during the first year the young men studied the "higher" mathematics, humanities, Latin, and possibly Greek. Second year, math and Latin continued, including Juvenal and Tacitus, plus Aristotle's Poetics, Longinus' On the Sublime, Heineccius' Logic, and, says Varnum Collins, "an abridgement of Locke's Essay." One instructor read to the class "a 'compendious history' of ancient philosophy." Carlyle also took French, though possibly Witherspoon took Greek instead. Third year, the young men continued again with math and Latin, and Carlyle, at least, attended lectures on natural philosophy and a class on divinity. The fourth and final year comprised courses in math, astronomy, applied physics of a sort (experiments in mechanics), and moral philosophy. Witherspoon graduated with a master's degree in 1739 and then remained at Edinburgh for an additional four years studying theology.⁸⁵

Witherspoon was ordained and in 1745 he obtained his first congregation in the village of Beith where he spent twelve years before becoming pastor at Paisley. During the years of his Scottish ministry he earned a wide reputation as a spokesman for the conservative "Popular" wing of the Scottish Presbyterians in a sermon and pamphlet war against the less strict "Moderates." His writings brought him to the attention of New Jersey Presbyterians, who in electing him to the vacant college presidency at Princeton, hoped, not without cause, that his selection would heal the breach between the New Sides and Old Sides

in the colony. Following the successful efforts of Richard Stockton, Benjamin Rush and others, to convince Witherspoon, and especially his reluctant wife, to come to New Jersey, the couple set sail in 1768 with their five children, worldly possessions, and a substantial gift for the college library.⁸⁶

Once in America, Witherspoon the minister began to be subsumed in Witherspoon the educator. Although he had been somewhat dismayed when he learned in London that he was inheriting a college underfunded and in debt, with relatively few students, he lost no time in turning the school around. In addition to successful fund-raising efforts, he improved teaching techniques and materials and enhanced the curriculum, adding for instance French and Hebrew to the available course list.⁸⁷

In a revenue-raising pamphlet to the West Indies in 1772, Witherspoon described the curriculum, to include in the first year "Latin and Greek, with Roman and Grecian antiquities, and rhetoric," and in the second, more Latin and Greek, plus geography, philosophy, and mathematics. The third year consisted of some continuation of "the languages," but mostly mathematics and natural philosophy, and in senior year students studied the "higher classics," more mathematics and natural philosophy, and Witherspoon's moral philosophy course. In addition juniors and seniors would go twice through his lectures on history and chronology and composition and criticism. The pamphlet added that the president "also taught the French language last winter, and it will continue to be taught to those who desire to learn it."⁸⁸

The similarity in the New Jersey curriculum and the one Witherspoon himself had experienced at the University of Edinburgh is

not hard to perceive. According to Ronald Gant, the President made the college equal to the other colonial colleges by "reorganizing and extending its curriculum on the lines with which he was familiar in Edinburgh and the other Scottish universities."⁸⁹

Not that the Princeton schedule was radically different in appearance from the college's course requirements before Witherspoon, nor even unrecognizably different from the Oxford and Cambridge curricula. As Douglas Sloan notes, "the names of the classes were, indeed, those of the English universities, but the course of study now displayed almost the exact pattern of the Aberdeen reform curriculum." In addition Witherspoon introduced the Scottish university lecture style to the College and added the works of many Scottish thinkers to the library. Had there been any doubt earlier in the college's history, with Witherspoon the Scottish Enlightenment had definitely arrived at Princeton.⁹⁰

It is not essential to recount the details of the Scottish Enlightenment here, nor even every aspect of the movement that touched Witherspoon. Garry Wills and, especially, Sloan have both discussed extensively the Princeton President's background and influence in this regard.⁹¹ Thoroughly familiar with Enlightenment principles, the Scottish divine was inspired by Thomas Reid's "common sense" philosophy, says Wills; Witherspoon quotes Francis Hutcheson more than any other writer in his lectures on Moral Philosophy, he adds; and his personal ethic ironically resembles that of Lord Kames, whom Witherspoon had earlier satirized. Sloan says that "Witherspoon brought the Enlightenment from Scotland to the College of New Jersey and gave it an

evangelical baptism," the result of which was that "the full scope of the Scottish Enlightenment began to acquire respectability in the eyes of both the New Side and Old Side leaders." All of this, Wills explains, created a situation wherein "Madison was plunged into the controversies of the Scottish Enlightenment the minute he entered Nassau Hall."⁹²

So nowhere in America were the Scottish philosophers studied with the intensity that they were at the College of New Jersey and, as will soon be apparent, nowhere at the College of New Jersey were they more evident than in Witherspoon's lectures, particularly on Moral Philosophy. Nevertheless Witherspoon's lectures should not be analyzed in terms of the Scottish Enlightenment alone; many of the "non-Scottish" sources of American republican constitutionalism appear in the President's lectures as well. These ideas were "Scottish" only in the broad sense that they were somewhat typical of Scottish thinking, however representative they may have also been of the larger British and European traditions at the same time.

There is every reason to suggest that Witherspoon's lectures reached and influenced Madison. The young Virginian was the kind of student every educator dreams of: he "tested out" of his freshman year and completed the remaining three-year curriculum in thirty months. Indeed, his intense study habits nearly ruined his health. Witherspoon later said that he had never known Madison to say or do anything improper while at Princeton, an assessment only to be expected of a pupil who had paid due deference to the master and due attention to the master's lectures. In addition, it is known that Madison stayed on at the college following his graduation in order to study Hebrew and other

subjects with Witherspoon. So the ties between the two men were strong.⁹³

Historians and biographers have concluded that no other teacher was to have so much influence on Madison's political thinking.

Witherspoon introduced the young man to Montesquieu, Grotius and Pufendorf, among others, and according to Jack Scott, editor of Witherspoon's lectures, he "instilled in Madison 'a peculiar blend of knowledge and self-sufficiency' in political thought that remained his permanent heritage."⁹⁴

Furthermore, contends James Smylie, Witherspoon was to influence greatly Madison's understanding of human nature: "Most of Madison's biographers mention the relation between the Scottish immigrant and his eminent pupil," he notes, "but few try to analyze systematically the thought of Witherspoon as it may have influenced the Virginian toward a particular view of human nature." Smylie argues that Madison's view of the human condition was derived from Witherspoon's Calvinistic Hutchesonism--that is, man is depraved, but capable of good. Says Smylie, "it remained for James Madison, Witherspoon's former student, to translate this wisdom into a responsible political structure."⁹⁵

So Witherspoon influenced Madison and the Virginian, in turn, says biographer Ralph Ketcham, "always held 'the Old Doctor,' . . . in admiration."⁹⁶ But if much of the detail of their relationship is lost, Witherspoon's lectures on Moral Philosophy are a guide to the general nature of things the older man must have communicated to the younger and are therefore perhaps the best evidence of the impact of Madison's college education on his political and constitutional thinking.

In the most recent publication of Witherspoon's lectures, editor Scott has provided annotations in which he attempts to identify the sources and potential sources of the Scottish cleric's teachings.⁹⁷ A comparison of the writers that emerge from Scott's notes as Witherspoon's sources with writers responsible for the Constitution's sources is revealing. Indications of classical reading and influence, for example, are prevalent in Witherspoon. His lectures contain thoughts that can be identified with Aristotle, Cicero, some Plato, as well as Lycurgus, Xenophon, Tacitus, Solon, and Seneca.

Of later thinkers, neither Hobbes nor Machiavelli is absent, nor are Montesquieu, Grotius, Vattel, Burlamaqui, Pufendorf, Shaftesbury and Locke. Whigs and Commonwealthmen featuring in the President's notes include Sidney and Harrington, though Trenchard and Gordon are noticeably absent.⁹⁸ Witherspoon apparently strained at least some of his Calvinism through Hutcheson. And of course ties with the Scottish Enlightenment thinkers are especially present, including Adam Ferguson, Francis Hutcheson; Henry Home, Lord Kames; Thomas Reid, Adam Smith, and even David Hume.

In the present study, however, a list of writers identified by Scott as important in Witherspoon's thinking cannot substitute for analysis of the lectures themselves for political and republican content. After all, it was through the word itself that young students absorbed the older man's thinking relevant to constitution-making. In a broad sense the lectures as a whole can be construed to suggest to man the best government for man. With Witherspoon, as with republican thinkers in general, there is not a clear line dividing principles of

human relationships, morality, ethics and religion from principles of politics, government and constitutionalism. But the extent to which general principles of "moral philosophy" influenced Madison's constitutional thinking is more conjectural than those principles dealing directly with politics, so for present purposes, it is best to focus on those lectures that stress political philosophy. Lecture Ten, "Of Politics," introduces the relevant passages.

In "Of Politics," to begin with, Witherspoon introduces students to the principles on which "society is formed." He explains the state of nature not as an ancient idea with which students should merely be familiar, but as a working concept from which to begin their political theorizing. Differentiating the Hobbesian from the Lockean-Hutchesonian idea of "natural liberty," Witherspoon sides with Locke and Hutcheson in denying the natural state as a state of war. He delineates the "perfect rights" in this state, including the rights to "life"; to use one's "faculties and industry" for personal benefit; to use the common things of the earth, air, water, and so on; "a right to personal liberty"; power over one's own life; the right to "private judgment in matters of opinion"; freedom of association; and "a right to character, that is to say, innocence." Inspired by Locke and Hutcheson, he explains the social compact as necessary for the formation and strengthening of society and the preservation of these rights, even to the extent of curtailing some of them.⁹⁹

When it comes time for Witherspoon to describe the best forms of government to come from the social compact, he divides all members of all societies into two categories, "the rulers and the ruled, the

magistrates and the subjects," both groups of which have their "rights." Among the "essential" rights of rulers, the college president, borrowing from Hutcheson, lists the powers of legislation, taxation, jurisdiction ("or the administration of justice"), and representation. "Less essential rights" include such powers as "coining of money" and "conferring honors on officers."¹⁰⁰

The manner in which rulers exercise their "rights," of course, depends on the form of government and so Witherspoon names and explicates the traditional forms that go back to Aristotle: monarchy, aristocracy, and democracy. Drawing heavily on Hutcheson, and possibly, suggests Scott, on Locke and Montesquieu as well, Witherspoon illustrates how none of these types of government, in its simple form, can meet the ends of the social compact, because each tends to become its degenerated counterpart. "If the true notion of liberty is the prevalence of law and order, and the security of individuals, none of the simple forms are favorable to it," he states. Monarchy becomes tyranny, and so on, he explains, citing Sparta, Athens and Rome as examples. "Hence it appears that every good form of government must be complex, so that the one principle may check the other."¹⁰¹

He continues that, although it is important that members of a community be virtuous, virtue in itself is insufficient to assure the stability of the state. "They must be so balanced, that when every one draws to his own interest or inclination, there may be an over poise upon the whole." Furthermore, "where there is a balance of different bodies, as in all mixed forms" of government, they must have what Hutcheson referred to as a "nexus imperii" to tie them together. Thus

the "great essential rights of rulers must be divided and distributed among the different branches of the legislature. Example: in the British government, the king has the power of making war and peace,--but the parliament have the levying and distribution of money, which is a sufficient restraint." Checks and balances, therefore, as a principle of a healthy constitution, would have become familiar to Madison through these lectures, if by no other means, during his college days.¹⁰²

In addition, says Witherspoon, and many Convention delegates would agree, the rulers of a society must have "considerable property," because property is power. "For this reason, did men in every state live entirely by agriculture, an agrarian law would be necessary to liberty." He goes on to explain the dangers of too much power in the hands of too few, that the number of subjects of a state should be neither too many nor too few, and the restricted circumstances under which resistance to one's government might be justified.¹⁰³

As the lectures continue, Witherspoon draws on concepts found in Hutcheson, Burlamaqui, Grotius, Pufendorf and Locke, though often without attribution, to elucidate the principles of natural and international law, illustrating them again from the history of Rome. On the topic of jurisprudence, he cites Solon, Xenophon, and Lycurgus to support the assertion that "a constitution is excellent, when the spirit of the civil laws is such as to have a tendency to prevent offences and make men good, as much as to punish them when they do evil."¹⁰⁴

What is more, based on a reading of Montesquieu, Witherspoon declares, "laws should be so framed as to promote such principles in general, as are favorable to good government, and particularly that

principle, if there be one, that gave rise to the constitution, and is congenial to it." By this he means that if there is an overriding principle on which a nation's laws are based, that principle must not be compromised, or "the constitution goes to ruin." Drawing on the ancient and modern republics for examples (with which Madison would exhibit familiarity in the Convention), he explains, "some states are formed to subsist by sobriety and parsimony, as the Lacedemonians." In Holland, the principle is industry, and in "Greece, ancient Rome, and Britain," it is "public spirit."¹⁰⁵

On whether it was desirable to have a multiplicity of written laws in a state, Witherspoon's lectures suggest that laws, which may be "either written or in the breasts of the magistrates," can be either too oppressive or too vague. "On the one hand, it seems to be the very spirit of a free constitution to have every thing as strictly defined as possible, and to leave little in the power of the judge," he explained, perhaps suggesting to the future Convention delegate the need for an enumeration of powers in such matters. "But on the other hand, a multiplicity of laws is so apt to lead to litigation and to end in ambiguity, that perhaps judges of equity, chosen by the district in which they live and are to act, and chosen but for a time, would be a more just and equitable method of ending differences." He adds, "But the difficulty of settling a constitution so as always to secure the election of impartial judges, has made modern states, where there is liberty, prefer a multiplicity of written laws."¹⁰⁶

On this subject Madison would eventually exhibit some of the ambivalence of his mentor, for he said from the Convention floor that

"he had brought with him into the Convention a strong bias in favor of an enumeration and definition of the powers necessary to be exercised by the national Legislature; but had also brought doubts concerning its practicability."¹⁰⁷

Witherspoon also recommends in the course of his lectures that in general a society should adopt an attitude of religious tolerance and beware of the possible negative consequences of too strict punishments for crimes. He then explains the purposes of civil laws, as he sees them.¹⁰⁸ He concludes his lecture series with discussions of oaths and vows, contracts, "the value of property," and "rights of necessity, and common rights."

Following the final lecture, the president recapitulates the whole, emphasizing those writers whom he considers most helpful in understanding the precepts he has presented, especially with regard to the nature of virtue, the heart of moral philosophy. His list is predominantly Scottish, including, Hutcheson, Hume, Lord Kames, Adam Smith, and Reid. "Some of the chief writers upon government and politics," he suggests, include Grotius, Pufendorf, Burlamaqui, Hobbes, Machiavelli, Harrington, Locke, Sidney, "and some late books, Montesquieu's Spirit of Laws; Ferguson's History of Civil Society; Lord Kaime's [sic] Political Essays, Grandeur and Decay of the Roman Empire; Montague's Rise and Fall of Ancient Republics; Goguet's Rise and Progress of Laws, Arts and Sciences."¹⁰⁹

Witherspoon, thus, went far in introducing the principles of republican constitutionalism to his students. Following his arrival in America, he was himself deeply engaged in the development of political

institutions. His support for the Patriot cause during the Revolution, to include service in the Continental Congress, provides additional evidence of his personal politicization. He was not the sole source of Princeton's influences on Madison's early constitutional thought, however. The substantial information Madison gleaned from Witherspoon was in addition to his involvement with the other politicizing aspects of the College, largely available to the earlier students. Madison was active in the American Whig Society, had friends among future patriots and even future Convention delegates, and, again, his individual study habits were as solid as those of any student. It is likely that he made regular use of the library. Still, of all Princeton's influences on the young man, Witherspoon's teaching was undoubtedly the most important, and the president's lectures on Moral Philosophy provide the most direct evidence of what his Virginian protege heard him say about constitutionalism. "Madison in his extensive political activity during the early years of the American nation often echoed concepts that he had first learned from Witherspoon," says Scott.¹¹⁰

With regard to Witherspoon and the Constitution, Ashbel Green, the Scottish educator's student, colleague and earliest biographer, noted that the president approved of the charter of 1787 as "embracing principles and carrying into effect measures, which he had long advocated, as essential to the preservation of the liberties, and the promotion of the peace and prosperity of the country."¹¹¹ Through Princeton and John Witherspoon thus emerges a picture of James Madison's earliest constitutional thinking.

SUMMARY

The intellectual sources of the American Constitution were transmitted to its framers in a variety of ways, one of the most important being through eighteenth-century higher education. The great number of delegates to the Federal Convention of 1787 who had a formal higher education background in an age when relatively few men went to college is itself reason to take note. But despite attempts by individual biographers to account for the education of particular delegates, or more general studies that conclude that education was a republicanizing force in colonial society, scholars to date have failed to account for the monumental impact of higher education as a whole on the creation of America's fundamental charter--and this in an era when the societal role of higher education and the meaning of the Constitution are debated daily.

This study has begun to illustrate the great importance that higher education had in creating in future delegates a constitutional mind, capable of grasping and articulating the principles of healthy government that would underlie their efforts to form a vast republic. These principles ranged from general concepts of the necessity of liberty for human happiness and the need to balance various societal interests in a nation's governance to more specific notions regarding standing armies, ex post facto laws and the make-up of legislatures.

The Inns of Court, the Scottish universities, Princeton and the other colonial colleges thus drew ideas from classical antiquity, the common law, commonwealth Whig republicanism, the Enlightenment, Protestant religion, and political history to convey to students a sense

of a society governed by finely balanced forces of liberty and stability. The delegates, especially the real framers of the Constitution, took these ideas as young men, recorded them, repeated them, reflected on them, assimilated them, added to and built on them throughout the years until the Revolutionary crises required that they be mobilized in the cause of uniting the American States.

NOTES

1. Benjamin Rush, "To the Citizens of Pennsylvania of German Birth and Extraction: Proposal of a German College," Letters of Benjamin Rush, edited by L.H. Butterfield (Princeton: Princeton University Press, 1951), 367.
2. George S. Pryde, The Scottish Universities and the Colleges of Colonial America (Glasgow: Jackson, Son & Company, 1957), 3.
3. H. Trevor Colbourn, "A Pennsylvania Farmer at the Court of King George: John Dickinson's London Letters, 1754-1756," The Pennsylvania Magazine of History and Biography 86 (1962): 242.
4. Ibid.
5. David A. Lockmiller, Sir William Blackstone (Chapel Hill, N.C.: University of North Carolina Press, 1938), 15, 18; "Inns of Court," A Dictionary of British History, J.P. Kenyon, consulting ed. (London: Pan Books, 1981), 190-191.
6. Marvin R. Zahniser, Charles Cotesworth Pinckney: Founding Father (Chapel Hill, N.C.: University of North Carolina Press, 1967), 17.
7. Lockmiller, 17-19.
8. Quoted in Adwin Wigfall Green, The Inns of Court and Early English Drama, (London, 1931), 3; Dictionary of British History, 190-191.
9. Green, 4-7. Ditton, John F., The Laws and Jurisprudence in England and America, (Boston, 1895), 95.
10. Ditton, 81. Zahniser, 17. John J. Reardon, Edmund Randolph: A Biography (New York: Macmillan Publishing Co., Inc., 1974), 14; Colbourn, 244; Blackstone quotations are from Lockmiller, 16.
11. Lockmiller, 16, 17.
12. Ibid., 16.
13. Anton-Hermann Chroust, The Rise of the Legal Profession in America, vol. 1 (Norman, Oklahoma: University of Oklahoma Press, 1965), 36.
14. Ibid., 36, 304.
15. Ibid., 33.

16. *Ibid.*, 33, 94, 304; Kenneth Bernard Umbreit, Our Eleven Chief Justices: A History of the Supreme Court in Terms of Their Personalities, vol. 1 (Port Washington, N.Y.: Kennikat Press, 1938) 59.

17. James Madison, The Debates in the Federal Convention of 1787, eds. Gaillard Hunt and James Brown Scott (Buffalo, N.Y.: Prometheus Books, 1987), 2:483.

18. Richard H. Barry, Mr. Rutledge of South Carolina (Freeport, N.Y.: Books for Libraries Press, 1971), 26.

19. Umbreit, 59-60.

20. *Ibid.*, 60. Nowhere has it been indicated that the literary circles of the Inns attracted Rutledge any more than had the study of literature in his early life. He did enjoy the theater, however, and indicated that he had seen performances by the renowned actor, David Garrick. Perhaps reflecting his own experience, he later wrote Edward that in order to get the most out of study at the Middle Temple he should learn shorthand, go to Church, learn French, and attend the theater; see Barry, 26.

21. Zahniser, 15-16.

22. *Ibid.*, 16.

23. *Ibid.*, 16-17; Lockmiller, 174; Frances Leigh Williams, A Founding Family: The Pinckneys of South Carolina (New York: Harcourt, Brace, Jovanovich, 1978), 32.

24. Robert G. Ferris and James H. Charlton, The Signers of the Constitution (Flagstaff, Arizona: Interpretive Publications, Inc., 1986), 204; Zahniser, 19; Rossiter, 249; Williams, 32.

25. Colbourn, 244.

26. John Dickinson to his father, 25 May 1754 in Colbourn, 269. All quotations from Dickinson's correspondence are taken from the letters printed in the Colbourn article.

27. *Ibid.*, 269-71; Dickinson to father, 15 August 1754, 278.

28. *Ibid.*, 8 March 1754, 257; 29 March 1754, 265; 15 August 1754, 277; 19 February 1755, 426; Dickinson to mother, 15 August 1754, 280; see also Colbourn's remarks, 246.

29. Dickinson to mother, 6 June 1756, 447.

30. Colbourn, 246.

31. Dickinson to mother, 2 August 1756, 453.

32. Dickinson to mother, 6 June 1756, 449.

33. Ibid.

34. Ibid.

35. Ibid. Colbourn says that on the issue of standing armies, Dickinson was familiar with John Trenchard, William Pulteney and James Burgh, 449n.

36. Ibid. 450; see also Colbourn's remarks, 248.

37. Colbourn, The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution (Chapel Hill, N.C.: University of North Carolina Press, 1965), 108; Dickinson to father, 8 March 1754, 257.

38. Dickinson to father, 8 March 1754, 257-58.

39. Dickinson to father, 25 May 1754, 269-70.

40. Dickinson to mother, 25 May 1754, 273; Dickinson to father, 19 February 1755, 425.

41. Dickinson to father, 8 March 1754, 259-60; Madison, Debates, 66.

42. Dickinson to father, 2 August 1756, 451; Jan. 21, 1755, 421, 422; Dickinson to mother, 2 August 1756, 453; Dickinson to father, 15 August 1754, 278.

43. Colbourn, 247; Dickinson to father, 15 August 1754, 278. Dickinson's contemporaries at the Middle Temple included William Cowper and John Horne Tooke. Though we have no record that he had any relationship with Dickinson, Tooke is especially interesting in light of his later activities. A liberal Whig, he assisted John Wilkes in his struggle to take his seat in Parliament and organized with Wilkes the Society for Supporting the Bill of Rights. In 1771 he formed the Constitutional Society and in 1778 "he was imprisoned for proposing to raise a subscription for the American colonists, in revolt against England." "Tooke, John Horne," Dictionary of British History, 339; see also Albert Goodwin, The Friends of Liberty: The English Democratic Movement in the Age of the French Revolution, (London: Hutchinson of London, 1979).

44. Garry Wills, Inventing America: Jefferson's Declaration of Independence (New York: Vintage Books, a Division of Random House, 1978), 251; Charles Page Smith, James Wilson: Founding Father 1742-1798 (Chapel Hill: University of North Carolina Press, 1956), 13, 16; Defoe quote on page 13; Ronald Gordon Cant, The University of St. Andrews: A Short History (Edinburgh: Scottish Academic Press, 1970), 89-90, 95.

Despite the university's decay during the early century, its alumni included Scottish philosopher Adam Ferguson; Cant, 90.

45. Cant, 79, 91.

46. Seed does not, however, state the source of his knowledge about Wilson's library borrowings; Geoffrey Seed, James Wilson (Millwood, N.Y.: KTO Press, 1978), 3. Smith, the earlier biographer, of whose work Seed is aware, stated that "there is no record of the books Wilson read at St. Andrews"; Smith, 26. Library holdings were presumably substantial, for as of 1709 the university had become entitled by law to a copy of every book published in Great Britain, and in 1764 university officials found a need to greatly expand the size of the library facility; Cant, 96.

47. Unidentified quotation in Seed, 4.

48. Cant, 83, citing unidentified eighteenth-century source. Smith, 16, 17; Henry F. May, The Enlightenment in America (New York: Oxford University Press, 1976), 64; Wills, 288-89; see also Chapter One, 46-51, above.

49. May, 342-347; J.D. Mackie, A History of Scotland (Middlesex, England: Penguin Books, 1964), 302.

50. Seed, 4, 17-18.

51. Wills is but one of many who mentions Wilson's ties with other Scottish universities, 250. Seed, 3-4.

52. Seed, 5.

53. David W. Robson, Educating Republicans: The College in the Era of the American Revolution, 1750-1800 (Westport, Ct: Greenwood Press, 1985), 58.

54. James McLachlan, The Princetonians 1748-68 (Princeton: Princeton University Press, 1976), xviii-xix; Lawrence Cremin, American Education: The Colonial Experience, 1607-1783 (New York: Harper and Row, 1970), 323, 325, 455-57. The Davies and Finley quotations are from John E. O'Connor, William Paterson: Lawyer and Statesman 1745-1806 (New Brunswick, N.J.: Rutgers University Press, 1979), 8-9, and from Robson, 43, 44.

55. Robson, 60, 70-74, 81-82.

56. Robson, 73-74.

57. O'Connor, 27-29; Robson, 69; McLachlan, 437.

58. McLachlan, xi. Titles of commencement orations quoted in Robson, 67-68. Robson says that all of the 1772 subjects appeared in Witherspoon's lectures.

59. William Paterson, Commonplace book, Manuscript Division of Princeton University Library, 67-114; quotation on 67. John E. O'Connor, as Paterson's biographer, has done a very good analysis of much of the content of Paterson's college papers. He did not do so, however, with the specific intent of tracing the development of Paterson's constitutional thinking, especially as it contributes to an understanding of the general relationship of higher education to the American Constitution. As such O'Connor ignored or overlooked many of the materials cited in the discussion that follows. I am nevertheless indebted to him for locating the Paterson materials and sorting out some of the basic questions pertaining to their content and dates. He notes, for instance, that Paterson's rendering of English history comes from Rapin and Smollett; O'Connor, 13.

60. Paterson, 15, 26.

61. Paterson, 6.

62. Paterson, 66.

63. Paterson, "Notes on Romans," College Composition Folder, Paterson Papers, Manuscript Division, Princeton University Library.

64. Paterson, Commonplace book, 44, 153.

65. Ibid., 24.

66. Ibid., 27-28, 31.

67. Ibid., 4.

68. The Mason quote is from Commonplace book, 55. It is unclear whether the "true politician" comes from "Rollin" or "Holt." The latter is presumably the English whig justice, Sir John Holt (1642-1710); Commonplace book, 66.

69. Ibid., 6.

70. Ibid., 23, 29, 190.

71. Madison, Debates, 81; Paterson, Commonplace book, 17.

72. Paterson, Commonplace book, 190, 194.

73. Ibid., 7.

74. Commonplace, 18. Again the name of the writer to whom Paterson refers here is difficult to decipher. It may be Holt or a short form of Rollin. Though it appears to be the former, the work cited is "the History of the War."

75. Ibid., 19.

76. Paterson, "Address on Dissolution of Nations," Political Essays Folder, Paterson Papers, Manuscript Division, Princeton University Library. This undated address has probably been correctly identified by its transcribers, Jonathan Silverman and Roberta L. Clemens, as "being clearly written in the 1760s or 1770s," as it refers to America as being comprised of colonies. O'Connor places it around 1774-75, Paterson, 51.

77. Paterson, "Dissolution," 2.

78. Ibid. 3, 4.

79. Ibid., 4.

80. Ibid., 1, 4.

81. Ibid., 4.

82. O'Connor, 19.

83. Douglas Sloan, The Scottish Enlightenment and the American College Ideal (New York: Teachers College Press, 1971); Benjamin Rush, The Autobiography of Benjamin Rush, edited by George W. Corner (Princeton: Princeton University Press, 1948), 31. Rush, for example, says Finley's requirements at the academy included student memorization of a portion of the catechism of the Church of Scotland; Wills, 13, 14; Irving Brant, James Madison: The Virginia Revolutionist 1751-1780 (Indianapolis: Bobbs-Merrill, 1941), 57-59.

84. Varnum Lansing Collins, President Witherspoon (New York: Arno Press, 1969), 1:11-18; Martha Lou Lemmon Stohlman, John Witherspoon: Parson, Politician, Patriot (Philadelphia: The Westminster Press, 1976), 12, 16-19.

85. Collins, 16-18, 20; Stohlman, 19, 20.

86. Sloan, 103-106; Stohlman, 21, 29-33; chapter 3; Collins, chapter 3.

87. Sloan 110-111; Stohlman, 67, 72-74.

88. Witherspoon's pamphlet on the curriculum is quoted at length in Sloan, 112; see also Stohlman, 77-78 and Collins, 143-144.

89. Ronald G. Cant, "Scottish and American Presbyterianism: Their Relations in the Revolutionary Age," Scotland, Europe and the American Revolution, edited by Owen Dudley Edwards and George Shepperson (Edinburgh: Edinburgh University Student Publications, 1976), 79.

90. Sloan, 112.

91. Sloan, chapter 4; Wills, Explaining America: The Federalist (Garden City, N.Y.: Doubleday & Co., 1981), 15-18, 20.

92. Wills, 15-17; Sloan, 145.

93. Robert A. Rutland, James Madison: The Founding Father (New York: MacMillan Publishing Company, 1987), 9; Ralph Ketcham, "James Madison at Princeton," Princeton University Chronicle 28, (Fall 1966), 40.

94. Brant, 73, 78; Jack Scott, ed., introduction to Lectures on Moral Philosophy by John Witherspoon (Newark: University of Delaware Press, 1982) 15, 44.

95. James H. Smylie, "Madison and Witherspoon: Theological Roots of American Political Thought," Princeton University Library Chronicle 22 (1961), 119-20, 124. Scott agrees, "Witherspoon directly affected his most famous pupil, James Madison, on the matter of human nature," for according to Madison, the seeds of faction were "sown in the nature of man." Scott, introduction to Lectures, 49, quoting The Federalist.

96. Ketcham, 40.

97. Witherspoon, Lectures. Although Witherspoon's lectures were given over the entire period of his tenure as president, they were not published until 1801. Scott explains, however, that the annotated text that he has produced comes from Varnum Collins' text which was reconciled with student copies of the lectures from as early as 1772. There is no reason to doubt that the lectures as published by Scott reflect anything different to what Madison would have heard. The context of references to the British government suggest that these are Witherspoon's views before the Revolution. In addition, Witherspoon refers in the lectures to recent books ("late books") as including Montesquieu's Spirit of Laws (1748); Ferguson's An Essay on the History of Civil Society (1767); Montague's Reflections on the Rise and Fall of Ancient Repubicks (1759); and Goguet's De l'origine des lois, des arts, et des sciences (1758). None of the titles he recommends to his students was first published after 1770.

98. "Eighteenth-century Whiggism of the anti-Walpolean variety" is absent from the lectures, says Scott, 44.

99. Witherspoon, 122, 128-129. See Madison on the "social compact" in the Convention; Madison, Debates, 121.

100. Witherspoon, 141, 147-48.

101. Madison would repeat a version of this in the Convention in his assertion that the "necessary objects" of a national government were to provide "more effectually for the security of private rights, and the steady dispensation of Justice"; Madison, 64; Witherspoon, 142-44, 148.

102. Witherspoon, 144, 149.

103. Ibid., 145.

104. Witherspoon, 159. Madison again exhibits in the Convention familiarity with the sources of lecture thirteen, "Of the Law of Nature and Nations"; see Madison, 121.

105. Witherspoon, 161-62, 166-67.

106. Witherspoon, 162.

107. Madison, 36.

108. Witherspoon, 162-165.

109. Ibid., 187. As dutiful editor, Scott goes one step further, and in the cases where Witherspoon cites an author without a title, mentions the work that the president most likely had in mind. He includes Harrington's, Oceana, Locke's Two Treatises of Government, Sidney's Discourses Concerning Government, Burlamaqui's Principes du droit naturel and Principes du droit politique, Hutcheson's A System of Moral Philosophy, Hume's Essays, Moral and Political, Smith's The Theory of Moral Sentiments, and, in addition to Montesquieu's Spirit of Laws, his Considerations sur les causes de la grandeur des Romains et de leur decadence, all works influential in one degree or another in the formation of the American constitutional mind, 189-191.

110. Montesquieu, Ferguson, Kames, and Hume are on his personal reading lists, according to Ketcham, 47. Scott, 50.

111. Quoted in Smylie, 130.

EPILOGUE

Although free constitutions of government seldom or never take their rise from the scheme of any single projector, yet are they often preserved by the vigilance, activity, and zeal, of single men. Happy are they who understand and who chuse this object of care; and happy it is for mankind when it is not chosen too late.

--Adam Ferguson, An Essay on the History of Civil Society, 1767

The delegates to the 1787 Constitutional Convention were "politicized," "republicanized," and "constitutionalized" in the course of their higher educational experiences: the three concepts are related but, of course, not synonymous. At the broadest level, the delegates as young men were politicized through education in the sense that it was during the higher education process that they began most directly to come to grips with the importance of and inherent dangers in power and authority as societal forces. Somewhat more narrowly, conceptually like descending through a funnel, that politicization assumed the form of republicanism--a way of thinking at the heart of which was the need to check power and distribute it widely, in order to guarantee and promote the liberty and happiness of the members of society. More narrow still, at the end of the funnel, was the concept of constitutionalism, which in the educational process entailed the study of those forms of government

most likely to fulfill the republican mandate of power being limited by fundamental laws to which even rulers were subject.

As this study has shown, the politicization of the delegates during the higher education process occurred to them in much the way that David Robson has shown that it occurred to American colonials in general. Only one or two of the very oldest formally-educated delegates, if any of them, perhaps William Samuel Johnson and William Livingston, undertook their education at a time when threats to British liberty, particularly British American liberty, did not occupy the public agenda. The potential dire consequences of the Seven Years or French and Indian War, reminded young American students at home and abroad during the 1750's and early sixties that the relatively independent society in which they had grown up was not to be taken for granted. It was this French menace that had college presidents and faculty members, when future delegates would have been present, calling on students to cherish the blessings of liberty. And it was war-related political developments in England that had young John Dickinson at the Inns of Court bemoaning threats to British liberty in the "mother" country as well, e.g., from the growth of standing armies.²

With the end of the war and the French threat gone, in virtually no time the Stamp Act crisis brought again to the forefront the issue of British American liberty, this time as jeopardized by Great Britain proper. And again as questions of how to safeguard political liberty dominated public debate, these questions found their way into the colleges for discussion at the academic level.

The tumultuous politics of the 1750's, sixties and seventies, therefore, created an environment ripe for the politicization of future Convention delegates attending colleges, universities or the Inns of Court during this era. Hardly could they refrain from drawing contemporary inferences from the political overtones of their classical and legal studies. Even as Paterson had noted on more than one occasion in his commonplace book the ambitiousness of various kings and emperors, so did observations on the uses and abuses of political power, historical and otherwise, not escape other delegates in the course of their formal studies.

But politicization of the delegates in the course of their higher education was not a mere product of the classroom. As noted earlier in this study Paterson, Ellsworth, Madison, Luther Martin, Rufus King, and numerous others belonged to the college debating societies which often took up political issues. These societies not only provided further exposure to political topics, however, but in helping students hone their oratorical skills, provided them with political tools as well. Similarly, delegates attended and frequently spoke at commencement exercises where political speeches were often the course of the day. And student activism in the sixties and early seventies of the eighteenth century was as common as student activism in the sixties and early seventies two hundred years later--witness Madison and others wearing homespun or protesting the move by New York merchants to break the colonial boycott of British imports.

The London experience for the Inns of Court members was likewise a politicizing experience. In addition to studying political and

politico-legal subjects in books and receiving practical experience in debate and oratory, Dickinson, Rutledge, Charles Cotesworth Pinckney and the others passed their student months at the heartland of British politics within walking distance from the Inns to the Houses of Parliament, where they could witness time and again contests involving some of the great political controversies of the age.

But the politicizing of the delegates as students went beyond making mere politicians of them--rather it was a particular republican brand of American political mind that emerged from eighteenth-century institutions of higher learning. Not only did future framers ponder the meaning of power in the social order, but they reflected on the means by which such power could be controlled, checked, and widely distributed for the res publica, that is, for the common good. Here again the several means by which students were politicized, in and out of the classroom, were at work. However, with regard to the republicanization of students, the formal curriculum played a vital role. The classics of ancient Greece and Rome that they studied, the writings of renowned common lawyers, Whig and country party polemics, Enlightenment ratiocination, and, at some colleges, the doctrines of religious dissidents all carried with them republican, not merely political, implications.

As Bernard Bailyn and others have noted, though a fringe movement in England, republicanism took on a more central role in America.³ It was therefore also more central to American higher education. There are two general explanations for why republican thinking took hold in American colleges while failing to do so in England. The first is the

same one given for the prevalence of republican thought in the colonies generally: social and political circumstances were different in America than in England, vitally different. The second explanation is the Scottish Enlightenment.

These explanations must not be understood too simplistically, however, and cannot be sustained without acknowledging the complexities of the transatlantic forces passing between Great Britain and its colonies. Americans were by no means all republicans; Britons were by no means all monarchists. By the late eighteenth century the Monarchy itself had taken on many republican aspects. And some delegates were no less republican for having attended the Inns of Court. In addition, the English dissenting academies had long been a spawning ground for the republickly inclined, and Charles Cotesworth Pinckney even found a haven for Whigs at Christ Church, Oxford. But the fact is in American colleges, especially those such as Princeton not tied to Anglicanism, future delegates were more likely to find a republican orthodoxy than in English institutions.

In the years before the Revolution American political and social circumstances were so different from those in England that ideas generally accepted in both countries regarding the rule of law and limitations on monarchical power, would have dramatic consequences for colonials while seeming innocuous for the English. Thus a Madison or Paterson at Princeton, reading of the ambitiousness of kings and rulers at a time when colonists felt Parliament and corrupt ministers threatened their own rights, would learn a different lesson than the

Oxford student who contemporaneously took up the study of Caesar or Louis XIV.

This point about different circumstances, though not a new one, can hardly be overemphasized because of its implications for higher education. Americans had experienced relative freedom in governing themselves for over a century. With the French threat eliminated there arose among the colonists even greater aspirations for self-governance and the exercise of liberty, particularly economic liberty. King George III's and Parliament's intrusion in American affairs just when circumstances were ripe for prosperity provoked a republican reaction much more to be anticipated in the colonies than in England, because Americans stood to lose more than the English, or even the British in general, from the new policies. This republican reaction in America, trickled down, even poured down, into institutions of higher education, so that future delegates learning lessons of history or "political science" quite naturally applied them to their present circumstances.

Those studying abroad may have had a different higher educational experience to some degree, but it was not without its republicanizing effects. It is significant, for example, that the only delegate to have studied at an English university was Pinckney, whose different circumstances in finding some Whig influence in his little corner of Oxford have already been noted. Inns of Court members--who embraced the writings of Coke and other seventeenth-century lawyers who had fought for the curtailment of Stuart power, who heard both sides of party political debate in Parliament and the streets of London, whose fellow law students included English radicals like John Horne Tooke, and who,

above all, brought to their studies a predisposition to protect the rights and benefits of their American homeland--were also readily republicanized in the course of their higher education experience, for all these forces, in their minds, pointed to the need to limit and distribute governmental power. The result was, if not a selective reading, then an original republican interpretation by American students of traditional works commonly a part of the higher educational experience.

This is not to say, however, that there was nothing different from the American and English higher education curriculum that had a tendency to make republican constitutionalists out of future delegates. As this study has shown, the College of New Jersey, especially, whose institutional impact at the Constitutional Convention was so disproportionately large, drew its inspiration and much of its subject matter from the Scottish Enlightenment. Although circumstances in later eighteenth-century Scottish-English relations had not been such as to create the need or hope for a newly independent Scotland, a certain fluctuating discontent in the northern country over the constitutional settlement of 1707 combined with new found economic and intellectual forces to bring Scottish conditions closer to those in America. Consequently Scottish thinking became a highly exportable commodity to the colonies.

A number of the colonial colleges partook directly or indirectly of Scottish intellectual developments. Thomas Jefferson, for example, would forever praise the education he received at the hands of his William and Mary Scottish tutor, William Small. But none of the

colleges were to bring the Scottish Enlightenment to America to the degree that Princeton did. This study has already pointed out that even before Witherspoon's arrival Princeton connections with Scotland were common, and with the Scottish cleric's arrival, those connections were made complete. Also apparent from the research here presented is the influence of Enlightenment thinking on American constitutionalism. It is no coincidence then that James Madison and James Wilson became the two great political philosophers of the Convention. Both had absorbed republican principles through the filter of the Scottish Enlightenment during some of the most intellectually formative years of their lives--their years of higher education.

Convention delegates, therefore, were politicized and republicanized while attending eighteenth-century institutions of higher education, especially Princeton and the Scottish universities with their Enlightenment influence and the Inns of Court with their common law influence and tendency to expose students to practical politics. But the colleges and the Inns went beyond infusing future framers with a general republican outlook. They also "constitutionalized" them; that is, they specifically caused young Convention members to-be to reflect on the nature of constitutions and constitutionalism and to begin to consider, long before the practical need would arise, how to establish a government that would safeguard their republican ideals.

Despite animosity between Americans and their former governors, the mixed-government concept prevalent in Great Britain constitutional theory was never really repudiated by the framers. As Gordon Wood has indicated, at the time of the Convention (as Alexander Hamilton found

out), delegates could not openly espouse a system too directly resembling the British one that they had lately forsaken, but the British constitution had, nevertheless, long been the ideal in American constitutional thinking. The states, and the colonies before them, had generally attempted to establish for their own governments model versions of the British constitutional example.⁴

According to early American political theory, it had not so much been constitutional defects that had brought on the Revolution, but rather colonists believed that it had been caused by abuses of executive power and the corruption of ministers and members of Parliament which had resulted in a constitutional imbalance in Britain. When it became apparent to many Americans that the Articles of Confederation were not up to the task of uniting and governing an American republic, constitutionally-minded statesmen borrowed heavily and often directly from the British constitution for their new system. They attempted to include in the American version, however, additional checks and balances not available in the British system in order to prevent future imbalances of power such as those that caused the Revolution.

American constitutionalism, therefore, did not so much repudiate as it did modify and adapt British constitutional thinking to the new country's circumstances. Though not referred to in such terms during the Convention debates, there is little question that the strong executive of the new Constitution reflected the monarchical element of a mixed government; the Senate was the aristocratic element, the American equivalent of the House of Lords; and the House of Representatives represented the "people" similarly to the British House of Commons.

But this part of the story is not new and the only reason it is retold here in its synoptic form is that it has important implications for the higher educational experience of the delegates. Their study of "constitutionalism," particularly the British form of government would not have been wasted, for they would not later be forced to reject the lessons of the past in order to create an "ideal" constitution for the United States. Rather student delegates before the Revolution analyzed and accepted the British system as the basis of, in Montesquieu's words, "the freest country that exists in the world." After the Revolution, they still accepted it to the extent that they deemed it reflected republican principles: the rule of law, limitations on power, representative and elective government, and so on.

Hence their collegiate study of and reflection on the precepts of mixed government sowed the seeds of American constitutionalism in the minds of the delegates and, in some respects, rightly marked the origin of the United States Constitution itself. Whether from Aristotle or from the model of the British constitution as illustrated by Montesquieu, Hutcheson, Witherspoon, or in Paterson's case, the Gentleman's Magazine, students learned directly that a government for the common good must be mixed, as was the British, and when the British system failed, they merely concluded that perhaps it had not been mixed enough.

Put the study of constitutionalism as a narrower component of republicanism required more from the delegates than a mere recitation of the elements of mixed government. As Paterson's commonplace book illustrates, the framers as students also became familiar with other

generally republican forms of government. The conclusions the New Jersey delegate drew from his analysis of the Polish and Genoese constitutions are not apparent, but the defect in the Polish model in allowing a simple veto by one Palatinik to defeat the efforts of the entire federation served as a second witness to the delegate on the deficiencies of the Articles of Confederation.

Delegates to the Constitutional Convention, thus, as students, became acquainted with principles of political power, of republicanism, and specifically of constitutionalism. This study has shown that, far beyond merely reaffirming their generally elite status in society, higher education provided delegates with the tools and many of the ideas with which they would create the Constitution. That many other constitution-making forces would come into play before the assembling of the Philadelphia Convention is not denied. To some extent higher education likely did elevate young men in social status and thus made it more likely for them to find themselves in such bodies as the Convention. But this has not been a study of whether a college education was likely to get a delegate elected, but rather it has addressed the question of, once he was elected and faced the prospects of creating a new nation, to what extent did a delegate's education provide him the ideas and the tools with which to proceed.

The delegates read newspapers of course; they heard political speeches, lectures and sermons in a number of forums; they attended or argued in court and local governing bodies and there learned political and legal methods and principles; and they often studied law and philosophy on their own. But overall the formation of the American

constitutional mind began in the colleges, the universities, and at the Inns of Court, where delegates learned to learn and studied what to study. Their reading in the interim between graduation and the beginning of the Convention built upon the foundations of political theory and learning laid in the course of higher education. No one will say that, absent the higher educational background of the delegates, there would have been no Constitution, but this study has shown that, absent that higher educational background, there would have been no Constitution as we know it.

One last note with regard to the implications of this study--thus far the emphasis of this concluding essay has been on the Constitution and the very substantial impact higher education had in transmitting and developing its intellectual sources. But beyond what this research says about the creation of the Constitution, it must be asked what it says about the nature of American higher education.

After the Revolution fewer Americans attended the Inns of Court, and as the number of American colleges and universities greatly expanded, the influence of particular existing institutions, including foreign schools, was diluted. The agenda and curricula, both formal and informal, of these existing institutions began to change. When republicanism completed its general displacement of monarchism in America, other old ideas about social order gave way. The "Great Chain of Being" was not so great as previously supposed. In the giving-way process, referred to by Gordon Wood as "the democratization of mind in the American Revolution," something was gained, but something was lost.⁵

"The formation of the republic was a product of America's Golden Age, the likes of which we shall not see again," says Forrest McDonald. Standing out among factors making it so were the intellectual abilities of the framers. Much owing to their higher educational experiences, the delegates brought to the task of constitution making exceptionally-well prepared minds. They had entered college, McDonald notes by way of example, at a time when few men did so and under such entrance requirements as most people today could not fulfill.⁶ (Never mind the Greek and Latin, any real foreign language competency is rare today among Americans at the end of their secondary schooling.)

So the framers were remarkable men, remarkably cultivated. But the educational system that to a great extent made them so has long since disappeared. With its passing have also gone the prospects of ever again assembling on American soil a convention of American statesmen (and today, women) such as the one that created the Constitution. Assumptions have changed, largely for the better, about whose right it is to govern in society. But while no one segment of society any longer considers itself most capable of governing the nation, neither does any one segment consider itself obligated to do so. Lacking the sense of responsibility that civic-minded republicans of the eighteenth century carried with them, most university-educated persons today never find the motivation to train their minds in the manner and depth that the framers did. Yet it may be that elements of this kind of education will ultimately be required to sustain indefinitely American constitutional ideals.

There continues to bubble, and sometimes to boil, a controversy in American constitutional thinking about whether judges should interpret the Constitution according to the "original intent" of the framers. This study is not about that. This study does however raise the suggestion that if the Constitution has generally been found to serve its purpose well, i.e., it has allowed for the governance of an extended republic while maintaining the fundamental rights of its citizens, then in order for it to continue to fulfill that purpose, it is requisite that those who govern have a profound understanding of the nature and especially the sources of American constitutionalism. If agreed that such an understanding is necessary, then higher education is the most logical forum to provide it. But American higher education in this regard largely fails in its commission.

Who today studies in depth and with serious intent the American constitutional tradition--or more appropriately, as this study reveals, the British-American, even Western constitutional tradition? Students of political science do not. In keeping with the sense that all things began anew with the Revolution, the emphasis in political science departments is post-1776 and, even more commonly, on the twentieth century.

Law students do not. Constitutional law courses focus almost exclusively on interpretations of the American Constitution by the Supreme Court. Casebooks, practically the sole source of study in such classes, include a smattering of early nineteenth-century seminal cases, but generally exclude earlier and extraneous materials. Other law school courses with a philosophical or historical base intended to

broaden a student's understanding of law in society, usually are subordinated in priority to more practical courses that will help students pass a bar exam, or worse, make them a lot of money. True, some legal scholars have a good understanding of the lengths and depths of the Constitution's origins, but such knowledge bypasses the mass of law studentkind. Whatever its virtues, law school is not the place to come to grips with American constitutionalism.

This leaves the perpetuation of the American constitutional mind to students of history. Unfortunately, however, constitutional history is out of vogue, and even when it was not, the focus, as in political science, was on post-American independence developments. Intellectual history, though offering much towards an understanding of constitutionalism, must by its definition also include so many other kinds of ideas, that the true intellectual historian generally cannot or will not give the constitutional-republican tradition the time and effort necessary to understand it. What is more, intellectual history, too, has been somewhat displaced in the current academic milieu by schools of social and cultural history. These schools even more generally ignore political and constitutional historical developments to focus on admittedly important, but almost all-consuming, long-ignored questions dealing with the history of ordinary people. Again, the framers, with their extraordinary minds, are almost excluded by definition.

Finally, what has long been known as political history, is not really a field in itself. More accurately the term designates the study of a particular period or place in light of its politics. It includes

such questions as who was elected when, or how did so and so ascend the throne, what wars were fought at the time, between whom, and why, with the emphasis on political causes. Again the focus has traditionally been on societal elites and the ways in which they have wielded power. Questions of republicanism and constitutionalism are surely relevant to and do emerge in politico-historical studies, but such studies do not resemble the methodical investigations of republican constitutionalism of the depth and breadth undertaken by Convention delegates.

Nowhere in twentieth-century America then would one expect to receive the kind of education which two hundred years ago allowed the delegates to the Convention to create the present constitutional system. Classicists still study the rise and fall of Greece and Rome; historians of seventeenth-century England may read some Sidney and Harrington; legal scholars may scan Coke and Blackstone, but "small-'r'" republicanism as an overreaching tradition, encompassing history, political science, language, literature, and the liberal arts in general, is a dead issue. The result is a society which generally lauds its "Constitution" but does not really understand that of which it is constituted.

NOTES

1. Adam Ferguson, An Essay on the History of Civil Society, 1767 (Edinburgh: University Press, 1966), 134.
2. David Robson, Educating Republicans: The College in the Era of the American Revolution, 1750-1800 (Westport, Connecticut: Greenwood Press, 1985), 38, 43-44; John E. O'Connor, William Paterson: Lawyer and Statesman, 1745-1806 (New Brunswick, New Jersey: Rutgers University Press, 1979), 8-9; John Dickinson to his mother, 6 June 1756, in H. Trevor Colbourn, "A Pennsylvania Farmer at the Court of King George: John Dickinson's London Letters, 1754-1756," The Pennsylvania Magazine of History and Biography 86 (1962): 449.
3. Bernard Bailyn, The Origins of American Politics (New York: Alfred A. Knopf, 1968), 39, 57-58.
4. Gordon S. Wood, "The Intellectual Origins of the American Constitution," National Forum 64, no. 4 (Fall 1984): 8.
5. Wood, "The Democratization of Mind in the American Revolution," Leadership in the American Revolution (Washington, D.C.: Library of Congress, 1974), 62-89.
6. Forrest McDonald, "The Intellectual World of the Founding Fathers," chap. in Requiem: Variations on Eighteenth-Century Themes (Lawrence, Kansas: University Press of Kansas, 1988), 1-2.

APPENDIX

HISTORICAL REFERENCES IN THE DEBATES OF THE CONSTITUTIONAL CONVENTION

Bedford *199 "We must like Solon make such a Government as the people will approve."

(In support of argument for equal representation of small and large States in the legislature).

Butler 49 He formed an opinion after "seeing the manner in which a plurality of military heads distracted Holland when threatened with invasion by the imperial troops."

(Contending for a single executive).

53 "But why might not a Cataline or Cromwell arise in this Country as well as in others."

(Changes his mind about a single executive if the executive is to have an absolute veto.)

61 Solon "gave the Athenians not the best Government he could devise; but the best they would receive."

(Arguing against inferior federal courts in the states.)

530 "He mentioned the late perfidious policy of the Stadholder in Holland; and the artifices of the Duke of Marlboro' to prolong the war of which he had the management."

(Suggesting executive share the power to make peace.)

Dickinson 47 "In case of a consolidation of the States into one great Republic, we might read its fate in the history of smaller ones."

(Insisting that the States not be abolished.)

"If ancient republics have been found to flourish for a moment only and then vanish for ever, it only proves

*Page references are to Madison's Debates in the Federal Convention, eds. Gaillard Hunt and James Scott (Buffalo: Prometheus Books, 1987).

that they were badly constituted."

(General encouragement for the project of forming a new government.)

72 He "did not admit that the [Roman] Tribunes lost their weight in proportion as their number was augmented and gave a historical sketch of this institution."

(Contending for a large Senate in reply to an argument by Madison.)

144 "The idea of annual elections was borrowed from the antient usage of England, a country much less extensive than ours."

(In support of triennial elections of House of Representatives, suggesting that one-third at a time be eligible for reelection.)

392 "Experience must be our only guide. Reason may mislead us. It was not Reason that discovered the singular and admirable mechanism of the English Constitution."

(As part of an argument for originating money bills in the House.)

407 "The Justiciary of Arragon he observed became by degrees, the lawgiver."

(Opposing the power of judges to set aside the law.)

445 "Greece and Rome were made unhappy by their slaves."

(Suggesting that the Constitution should prohibit the importation of slaves, Dickinson takes issue with Charles Pinckney's use of history to argue the contrary.)

Ellsworth 189 "Holland . . . had, notwithstanding a like equality in the Dutch Confederacy, a prevailing influence in the public measures. The power of self-defence was essential to the small States."

(Urging compromise on the issue of representation in the Senate.)

193 "No instance of a Confederacy has existed in which an equality of voices has not been exercised by the members of it."

(Again, urging compromise. Madison takes issue with Ellsworth's knowledge of history here, however.)

Franklin 44 "As all history informs us, there has been in every State and Kingdom a constant kind of warfare between the governing and governed: the one striving to obtain more for its support, and the other to pay less. And this has alone occasioned great convulsions, actual civil wars, ending either in dethroning of the Princes, or enslaving of the people."

"There is scarce a king in a hundred who would not, if he could, follow the example of Pharoah."

45 The Quakers, "for more than an hundred years," have practiced government without paying the governors.

(All three citations are part of a speech favoring the executive serving with no salary.)

55 "The people [of the United Netherlands] being under great obligation to the Prince of Orange whose wisdom and bravery had saved them, chose him for the Stadholder. He did very well. [But his powers being eventually laid aside] . . . there was a party . . . which spilt a great deal of blood, murdered the deWitts, and got the powers revested in the Stadholder."

(Explaining how the process of time had transformed the republic of the Netherlands into a virtual monarchy.)

85 "I recollect that in the beginning of this Century, when the Union was proposed of the two Kingdoms, England and Scotland, the Scotch Patriots were full of fears, that unless they had an equal number of Representatives in Parliament, they should be ruined by the superiority of the English."

(Suggesting the small States fears of proportional representation were unfounded.)

93 He "related very pleasantly the progression in ecclesiastical benefices, from the first departure from the

gratuitous provision for the Apostles, to the establishment of the papal system."

(Suggesting that abuses of power in every governmental system are inevitable, he wants only modest salaries for members of Congress.)

181 "We have gone back to ancient history for models of Government, and examined the different forms of those Republics which having been formed with the seeds of their own dissolution now no longer exist. And we have viewed Modern States all round Europe, but find none of their Constitutions suitable to our circumstances."

(Leading up to suggestion that the Convention begin future sessions with prayer.)

290 "History furnishes one example only of a first Magistrate being formally brought to public Justice. Every body cried out against this as unconstitutional."

(Arguing that provision for the impeachment of the executive is essential in the new constitution. Note: The fact that Franklin felt no need to specify that he was referring to Charles I illustrates his assumption that this particular historical allusion was common knowledge among the delegates.)

292 "He mentioned the case of the Prince of Orange during the late war" in which the Prince was suspected of failing to carry out an agreement with France, but because he was unimpeachable could not be called into question about it by the Dutch people. The Prince thus "gave birth to the most violent animosities and contentions" which could otherwise have been avoided.

(Further arguing for the impeachability of the executive.)

Hamilton 113 "The Amphictionic Council had it would seem ample powers for general purposes. It had in particular the power of fining and using force against delinquent members. What was the consequence. Their decrees were mere signals of war. The Phocian war is a striking example of it. Philip at length taking advantage of their disunion, and insinuating himself into their Councils, made himself master of their fortunes."

113-114 "The German Confederacy affords another lesson. The authority of Charlemagne seemed to be as great as could be necessary. The great feudal chiefs however, exercising their local sovereignties, soon felt the spirit and found the means of, encroachments, which reduced the imperial authority to a nominal sovereignty."

114 "Other examples instruct us in the same truth"; e.g. the Swiss cantons.
(Contending that none of these governments had enough central power to prevent their demise or near demise.)

118 "The election of Roman Emperors was made by the Army. In Poland the election is made by great rival princes with independent power, and ample means, of raising commotions. In the German Empire, the appointment is made by the Electors and Princes, who have equal motives and means, for exciting cabals and parties."
(Suggesting the establishment of an "elective monarch.")

129 "The examples of Persia and the Roman Empire, cited by (Mr. Wilson) were he thought in favor of his doctrine: the great powers delegated to the Satraps and proconsuls, having frequently produced revolts, and schemes of independence."
(Wanting to abolish the states as independent sovereignties, but to retain them in subordinate roles.)

169 "When the Tribunitial power had levelled the boundary between patricians and plebeians, what followed? The distinction between rich and poor was substituted."
(In a speech generally encouraging the delegates to persist in their efforts to create a republic, Hamilton is noting that inequality of wealth is an inevitable result of liberty.)

King 200 "The articles of Union between England and Scotland furnish an example of such a provision in favor of sundry rights of Scotland. When that Union was in agitation, the same language of apprehension which has been heard from the smaller States, was in the mouths of the Scotch patriots. The articles however have not been violated and the Scotch have found an increase of prosperity and happiness."

(Suggesting that the small state-large state impasse could be overcome by specifying protective measures for the small states within the constitution itself.)

Madison 65 "These observations are verified by the Histories of every Country antient and modern. In Greece and Rome the rich and poor, the creditors and debtors, as well as the patricians and plebeians alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities of Rome, Athens and Carthage, and their respective provinces: the former possessing the power, and the latter being sufficiently distinguished to be separate objects."

(Warning of the need for checks and balances, of the threat of factions and the tyranny of the majority. Asserting that the people must directly elect at least one house of the legislature.)

71 "The example of the Roman Tribunes was applicable. They lost their influence and power, in proportion as their number was augmented. . . ."

(Arguing for a small, elite Senate. See Dickinson's response above.)

122-23 "Will ['Mr. Patterson's plan'] prevent encroachments on the federal authority? . . . If we recur to the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole. He then reviewed the Amphyctionic and Achaean confederacies among the antients, and the Helvetic, Germanic and Belgic among the moderns, tracing their analogy to the U. States."

124-25 "Will it [Paterson's plan] secure the Union against the influence of foreign powers over its members. . . . As lessons which claimed particular attention, he cited the intrigues practised among the Amphyctionic Confederates first by the Kings of Persia, and afterwards fatally by Philip of Macedon: among the Achaeans, first by Macedon and afterwards no less fatally by Rome: among the Swiss by Austria, France and the lesser neighbouring powers: among the members of the Germanic Body by France, England, Spain and Russia--: and in the Belgic Republic, by all the great neighbouring powers."

125 The Paterson Plan would actually work to the disadvan-

tage of the small States. "He illustrated the position by the history of the Amphyctionic Confederates: and the ban of the German Empire."

(The context of the above three citations illustrates that, in each instance, Madison is attacking particular aspects of the New Jersey alternative to his Virginia Plan.)

141 "All the examples of other confederacies prove the greater tendency in such systems to anarchy than to tyranny; to a disobedience of the members than to usurpations of the federal head."

(Making the point that he believes they have more to fear from the States encroaching on the powers of the federal government, than from the federal government encroaching on the States.)

178 "Experience" taught that large governments tend to become rivals rather than join together against smaller governments. "Carthage and Rome tore one another to pieces instead of uniting their forces to devour the weaker nations of the Earth. The Houses of Austria and France were hostile as long as they remained the greatest powers of Europe. England and France have succeeded to the pre-eminence and to the enmity. To this principle we owe perhaps our liberty."

179 "Among the principal members of ancient and Modern confederacies, we find the same effect from the same cause. The contentions, not the Coalitions of Sparta, Athens and Thebes, proved fatal to the smaller members of the Amphyctionic Confederacy. The contentions, not the combinations of Prussia and Austria, have distracted and oppressed the Germanic empire."

"What was the condition of the weaker members of the Amphyctionic Confederacy. Plutarch (life of Themistocles) will inform us that it happened but too often that the strongest cities corrupted and awed the weaker, and that Judgment went in favor of the more powerful party."

(Further arguing against equal representation of large and small States.)

186 "The means of defence against foreign danger, have been always the instruments of tyranny at home. Among the

Romans it was a standing maxim to excite a war, whenever a revolt was apprehended. Throughout all Europe, the armies kept up under the pretext of defending, have enslaved the people."

(Arguing against standing armies.)

194 Oliver Ellsworth had "erred in saying that no instance had existed in which confederated States had not retained to themselves a perfect equality of suffrage. Passing over the German system in which the King of Prussia has nine voices, he reminded Mr. E. of the Lycian confederacy, in which the component members had votes proportioned to their importance, and which Montesquieu recommends as the fittest model for that form of Government." Ellsworth's argument was faulty regardless, "the History and fate of the several confederacies modern as well as Antient, demonstrating some radical vice in their structure."

(Still arguing for proportional representation. See Ellsworth, above.)

319 "Germany and Poland are witnesses of this danger [of the legislature electing the executive]. In the former, the election of the Head of the Empire, till it became in a manner hereditary, interested all Europe, and was much influenced by foreign interference. In the latter, altho' the elective Magistrate has very little real power, his election has at all times produced the most eager interference of foreign princes, and has in fact at length slid entirely into foreign hands."

(Arguing government more subject to foreign influence when the executive is elected by the legislature.)

375 He "observed that the British Parliament possessed the power of regulating the qualifications both of the electors and the elected; and the abuse they had made of it was a lesson worthy of our attention."

(Opposing the suggestion that the legislature itself should decide whether property qualifications should be required for admission to its body.)

Martin, L. 175 "In order to prove that individuals in a State of nature are equally free and independent he read passages from

Locke, Vattel, Lord Summers--Priestly. To prove that the case is the same with States till they surrender their equal sovereignty, he read other passages in Locke and Vattel, and also Rutherford."

(Shoring up his argument for the independent sovereignty and thus equality of the individual States. Summers--Lord Somers--particularly was a historical writer.)

Mason 54 "The probable abuses of a negative [or executive veto] had been well explained by Dr. F. as proved by experience, the best of all tests."

(Arguing primarily against an elective monarchy. Uses British constitution as an example, thus indicating again the use of the term "experience" extends beyond personal experience for the delegates.)

327 He "mentioned the parliamentary qualifications adopted in the Reign of Queen Anne, which he said had met with universal approbation."

(Helping Convention decide on appropriate qualifications for members of the legislature. Madison does not elaborate; perhaps neither did Mason.)

432 "An act may be treason against a particular State which is not so against the U. States. He cited the Rebellion of Bacon in Virginia as an illustration of the doctrine."

(Helping to define treason and a suggestion of some sovereignty for the States.)

443 "He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the Commissioners sent to Virginia, to arm the servants and slaves, in case other means of obtaining its submission should fail."

(Supporting a constitutional prohibition of the slave trade.)

Morris, G. 218 Fearing possible extortion of Senate by House if only the House can originate money bills, "he illustrated this danger by the example of the Long Parliament's

expedients for subverting the House of Lords; concluding on the whole that the restriction would be either useless or pernicious."

(Arguing the worthlessness of the Senate representation committee's recommendation that only the House be able to initiate money bills.)

222 "We shall establish an Aulic council without an Emperor to execute its decrees. The same circumstances which unite the people here, unite them in Germany. They have there a common language, a common law, common usages and manners, and a common interest in being united; yet their local jurisdictions destroy every tie. The case was the same in the Grecian States. The United Netherlands are at this time torn in factions. With these examples before our eyes shall we form establishments which must necessarily produce the same effects."

(Generally but vehemently contending for a strong central government.)

269 "If the Executive be chosen by the National Legislature, . . . usurpation and tyranny on the part of the Legislature will be the consequence. This was the case in England in the last Century. It has been the case in Holland, where their Senates have engrossed all power. . . . An election by the Legislature will bear a real likeness to the election by the Diet of Poland."

(Arguing that the independence of the executive requires that he not be chosen by the national legislature.)

282 "Wealth tends to corrupt the mind and to nourish its love of power, and to stimulate it to oppression. History proves this to be the spirit of the opulent."

(Arguing for a strong executive as a check on the legislature.)

293 "One would think the King of England well secured against bribery. . . . Yet Charles II was bribed by Louis XIV."

(Changing his previous position to support now the impeachability of the executive.)

321 "We adopt a rotation which produces instability of Councils. To avoid Sylla we fall into Charibdis. A change of men is ever followed by a change of measures . . . Rehoboam will not imitate Solomon."

(Combining Greek literary with Biblical allusion to suggest general opposition to constant rotation of executive.)

407 "Encroachments of the popular branch of the Government ought to be guarded against. The Ephori at Sparta became in the end absolute."

"If the Executive be overturned by the popular branch, as happened in England, the tyranny of one man will ensue. In Rome where the Aristocracy overturned the throne, the consequence was different."

(Arguing for the executive to have an absolute veto.)

Pierce 95 "Great mischiefs had arisen in England from their septennial act which was reprobated by most of their patriotic Statesmen."

(Calling for three year terms for senators.)

Pinckney, 156 "If it were proper to go here into a historical Charles dissertation on the British Constitution, it might easily be shewn that the peculiar excellence, the distinguishing feature of that Government can not possibly be introduced into our system."

157 "I believe it is well ascertained that the parts which compose the British Constitution arose immediately from the forests of Germany; but the antiquity of the establishment of nobility is by no means clearly defined. Some authors are of opinion that the dignity denoted by the titles of dux et comes, was derived from the old Roman to the German Empire; while others are of opinion that they existed among the Germans long before the Romans were acquainted with them. The institution however of nobility is immemorial among the nations who may probably be termed the ancestors of Britain."

159 "I assert that their situation [the people of the United States] is distinct from either the people of Greece or Rome, or of any State we are acquainted with among the antients.--Can the orders introduced by the institution of Solon, can they be found in the United

States? Can the military habits and manners of Sparta be resembled to our habits and manners? Are the distinctions of Patrician and Plebeian known among us? Can the Helvetic or Belgic confederacies, or can the unwieldy, unmeaning body called the Germanic Empire, can they be said to possess either the same or a situation like ours? I apprehend not.

(Illustrating why the British constitution was not applicable in the United States.)

367 Concerned about those with foreign interests serving in the Senate, "he quoted the jealousy of the Athenians on this subject who made it death for any stranger to intrude his voice into their Legislative proceedings."

(Contending for a fourteen-year previous citizenship requirement for senators.)

444 "If slavery be wrong, it is justified by the example of all the world. He cited the case of Greece Rome and other antient States; the sanction given by France England, Holland and other modern States. In all ages one half of mankind have been slaves."

(Contesting that tampering with slavery will jeopardize the constitution in the South.)

504 "He considered the eligibility of members of the Legislature to the honorable offices of Government, as resembling the policy of the Romans, in making the temple of virtue the road to the temple of fame."

(Arguing against making members of Congress ineligible to hold other offices.)

Sherman 464 "If the Executive can model the army, he may set up an absolute Government. . . . James II was not obeyed by his officers because they had been appointed by his predecessors not by himself."

(Calling for limitations in the authority of the Executive in the appointment of officers.)

Wilson 67 "He saw no incompatibility between the National and State Governments provided the latter were restrained

to certain local purposes; nor any probability of their being devoured by the former. In all confederated Systems antient and modern the reverse had happened; the Generality being destroyed gradually by the usurpations of the parts composing it."

(Arguing to retain the States under the new system, but in a limited role.)

109 "In order to controul the Executive you must unite it. One man will be more responsible than three. Three will contend among themselves till one becomes the master of his colleagues. In the triumvirates of Rome first Caesar, then Augustus, are witnesses of this truth. The Kings of Sparta, and the Consuls of Rome prove also the factious consequences of dividing the Executive Magistracy."

(Calling for a single executive.)

129 "All large Governments must be subdivided into lesser jurisdictions. As Examples he mentioned Persia, Rome, and particularly the divisions and subdivisions of England by Alfred."

(Insisting that retention of the States was essential.)

138 He "observed that if a proper model [for a legislature] were not to be found in other Confederacies it was not to be wondered at. The number of them was small and the duration of some at least short. The Amphyctionic and Achaean were formed in the infancy of political Science; and appear by their History and fate, to have contained radical defects. The Swiss and Belgic Confederacies were held together not by any vital principle of energy but by the incumbent pressure of formidable neighbouring nations: The German owed its continuance to the influence of the H. of Austria."

(Urging a two-branch legislature.)

163 "He was lost in the magnitude of the object [of the Convention]. The project of Henry the 4th and his Statesmen was but the picture in miniature of the great portrait to be exhibited."

(Arguing for the importance of making a good

constitution and, hence, against the election of the Senate by the state legislatures.)

219 "Queen Anne was obliged to dissolve her Parliament in order to terminate one of these obstinate disputes between the two Houses."

390 "He stated the case of a Preamble to a money bill sent up by the House of Commons in the reign of Queen Anne, to the H. of Lords, in which the conduct of the displaced Ministry, who were to be impeached before the Lords, was condemned."

(Contending that it is not necessary to originate money bills in the House.)

408 "After the destruction of the King in Great Britain, a more pure and unmixed tyranny sprang up in the parliament than had been exercised by the monarch."

(Arguing for a strong executive; worrying about a strong legislature.)

473 In Great Britain, "Chief Justice Holt, he remarked, had successively offended by his independent conduct, both houses of Parliament. Had this happened at the same time, he would have been ousted."

(Citing Holt, Lord Chief Justice from about 1689-1710, to argue against legislative ability to remove judges.)

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